

Exhibit VVV

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09:27:20 1 Judge Kennelly, November 30, 2016, 9:30 a.m. call and Fields
09:28:15 2 v. City of Chicago.

09:36:11 3 THE CLERK: Case number 10 C 1168, Fields v. City of
09:36:16 4 Chicago.

09:36:19 5 MR. LOEVY: Good morning, your Honor. Jon Loevy,
09:36:23 6 Steve Art, Anand Swaminathan, and Candace Gorman on behalf of
09:36:26 7 the plaintiff.

09:36:27 8 MR. NOLAND: Dan Noland, Terry Burns and Paul
09:36:31 9 Michalik for the City and Commander Murphy.

09:36:31 10 MR. KULWIN: Shelly Kulwin and Rachel Katz on behalf
09:36:34 11 of Mr. O'Callaghan.

09:36:35 12 THE COURT: Anything we need to talk about before we
09:36:37 13 get the jury out here?

09:36:38 14 MR. KULWIN: I have a number of issues about
09:36:40 15 Mr. Kees, Judge.

09:36:41 16 THE COURT: Okay.

09:36:41 17 MR. KULWIN: The first is I anticipate --

09:36:44 18 THE COURT: Hang on one second. Go ahead.

09:36:48 19 MR. LOEVY: Your Honor, before he starts, I am going
09:36:50 20 to hand you a copy of your ruling so it's handy if you would
09:36:54 21 like.

09:36:54 22 THE COURT: That's fine.

09:36:55 23 MR. LOEVY: As well as the proffer that was related
09:36:56 24 to it by the defense.

09:37:03 25 THE COURT: Wait a second.

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09:37:09 1 MR. ART: Your order refers to the defendant.

09:37:12 2 MR. KULWIN: Whenever you are ready.

09:37:14 3 THE COURT: Go ahead.

09:37:14 4 MR. KULWIN: The first one is I anticipate that
09:37:16 5 plaintiff's counsel will try to cross-examine Mr. Kees about
09:37:20 6 statements made by the government in response to a Rule 35
09:37:26 7 that he filed in 1994. I don't think that Mr. Kees should be
09:37:31 8 asked those questions, it's hearsay, the only way he would
09:37:34 9 know about them is through hearsay. Those questions to the
09:37:37 10 extent that they are relevant, admissible, if they are, I am
09:37:42 11 not signing they are.

09:37:42 12 THE COURT: Rule 35 was filed when?

09:37:44 13 MR. KULWIN: I believe he filed it in 1994 or 199 --

09:37:50 14 THE COURT: Did it come out at the previous trial?

09:37:53 15 MR. KULWIN: No, it came out -- I believe he filed it
09:37:56 16 --

09:37:56 17 THE COURT: I'm asking were these statements elicited
09:38:00 18 at the previous trial? Is this something you're intending to
09:38:04 19 attempt to elicit?

09:38:05 20 MR. LOEVY: Yes, but not through this witness. In
09:38:08 21 other words, what happened was the government --

09:38:10 22 THE COURT: All right. What are the statements that
09:38:12 23 you are talking about, Mr. Kulwin.

09:38:13 24 MR. KULWIN: Barry Elden made a filing that the
09:38:20 25 government says they believes he is a liar. This all came out

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09:38:23 1 at the El Rukn hearings.

09:38:25 2 THE COURT: What's the witness that you are planning
09:38:27 3 to elicit.

09:38:28 4 MR. LOEVY: We are planning to elicit from Mr. Kees
09:38:29 5 the underlying problem, he did lie repeatedly.

09:38:33 6 THE COURT: Yeah. What Mr. Kulwin is talking about
09:38:34 7 is the government's statement to that effect is that right?

09:38:36 8 MR. LOEVY: Yes.

09:38:37 9 MR. KULWIN: Yes.

09:38:38 10 MR. LOEVY: And what the government said was after
09:38:40 11 Mr. Kees --

09:38:40 12 THE COURT: Look.

09:38:41 13 MR. LOEVY: I'm telling you.

09:38:42 14 THE COURT: Answer my question.

09:38:43 15 MR. LOEVY: I'm trying to.

09:38:44 16 THE COURT: What's the witness that you intend to
09:38:46 17 elicit this from?

09:38:47 18 MR. LOEVY: Hogan.

09:38:47 19 THE COURT: When is he going to testify?

09:38:49 20 MR. KULWIN: Probably next --

09:38:51 21 THE COURT: I am not going to worry about it.

09:38:53 22 MR. KULWIN: Great.

09:38:53 23 THE COURT: I am not going to worry about it.

09:38:55 24 MR. KULWIN: This is all about Kees.

09:38:57 25 The second thing is I want -- I want the plaintiffs

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09:39:04 1 to be barred from saying when they gave you this deal, like
09:39:07 2 this, Judge, and I am making a hand gesture, so I am --

09:39:10 3 THE COURT: You're asking me to bar the hand gesture.

09:39:15 4 MR. KULWIN: I am moving in limine to bar hand
09:39:18 5 gestures on top of everything else, so I need your full
09:39:22 6 attention.

09:39:22 7 THE COURT: I am paying attention. I already know
09:39:25 8 what you are going to say.

09:39:27 9 MR. KULWIN: And what they gave you, and what they
09:39:29 10 gave you, and what they gave you.

09:39:31 11 THE COURT: Don't do the hand gesture, all right?

09:39:33 12 MR. LOEVY: May I ask. I won't gesture. May I ask
09:39:35 13 the witness isn't it true you had an understanding -- in fact,
09:39:38 14 I can prove up that O'Callaghan made him a promise.

09:39:41 15 THE COURT: You know what, when you stop in the
09:39:43 16 middle of a sentence and start a new sentence, it makes it
09:39:46 17 very difficult to follow what you're saying. You do this with
09:39:49 18 witnesses too.

09:39:50 19 MR. KULWIN: To great effect I might add.

09:39:52 20 THE COURT: Start over.

09:39:54 21 MR. LOEVY: Your Honor, we intend to prove that
09:39:57 22 O'Callaghan made him a promise that he would take care of him
09:40:00 23 that wasn't reflected in the agreement and Mr. Kulwin wants to
09:40:03 24 argue no, no, no, no, that was just the government trading his
09:40:07 25 testimony for a deal, but, yes, we intend to ask Mr. Kees,

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09:40:11 1 isn't it true O'Callaghan promised you he would take care of
09:40:13 2 you.

09:40:13 3 MR. KULWIN: When, in 1989?

09:40:16 4 THE COURT: All right.

09:40:17 5 MR. KULWIN: I'm sorry, Judge.

09:40:18 6 THE COURT: I don't have a problem with you asking
09:40:19 7 that question. What I'm talking about is when you're talking
09:40:22 8 about the current Rule 35 which is what you're talking about?

09:40:25 9 MR. KULWIN: It's one of them. There are others,
09:40:28 10 because the state cut him a deal in 2013, he had an original
09:40:33 11 plea deal with the federal government in 1990. The questions
09:40:39 12 always come out when they gave you a deal, when they gave you
09:40:42 13 another deal.

09:40:42 14 THE COURT: There's not going to be a motion in
09:40:45 15 limine regarding pronounce, okay, that somebody can't use
09:40:49 16 pronounce. I can bar the hand gestures. I am not going to
09:40:52 17 bar somebody from using they. Seriously, that level of micro
09:40:57 18 managing just isn't -- it's not just sane.

09:40:59 19 So no hand gestures.

09:41:01 20 MR. LOEVY: No hand gestures.

09:41:03 21 THE COURT: People giving you deals and they giving
09:41:06 22 you deals. Just ask questions.

09:41:08 23 What's next?

09:41:09 24 MR. KULWIN: I anticipate that there's going to be
09:41:11 25 questioning of Mr. Kees speculating on whether he got some

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09:41:14 1 consideration to testify in this case in April of 2014.
09:41:20 2 There's no evidence of it, there's no basis for it, there's no
09:41:24 3 good faith basis to ask the question. In October -- he
09:41:28 4 testified in April 2014, in October of 2014, he went for
09:41:34 5 parole, he lost, there was no deal given and the question is
09:41:40 6 going to be like, oh, come on, we know that you really got
09:41:43 7 one, it's bad faith and the question itself is prejudicial.
09:41:47 8 So I want to bar it.

09:41:48 9 THE COURT: Okay. That request is overruled.

09:41:49 10 What's your next one?

09:41:50 11 MR. KULWIN: No questions about why the state's
09:41:59 12 attorney or why he believes the state's attorney gave him a
09:42:02 13 deal in 2013. They can ask him didn't you get a deal in 2013,
09:42:09 14 but not, you know, he would have no way of knowing the thought
09:42:13 15 process of the state's attorney and anyway he would know it is
09:42:18 16 through hearsay.

09:42:19 17 THE COURT: Mr. Loevy?

09:42:20 18 MR. LOEVY: We are going to ask him, isn't it true in
09:42:22 19 advance of the deposition that you gave in this case, you got
09:42:25 20 a deal and we had the same issue with Hawkins. You know, they
09:42:28 21 can argue that it's unrelated to his testimony, but that's
09:42:30 22 what it was related to. There was nothing else that
09:42:34 23 precipitated the deal.

09:42:35 24 THE COURT: Did I not say that -- have I not said on
09:42:39 25 other witnesses -- honestly, I don't remember which way these

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09:42:43 1 requests were being made, but I think I have been relatively
09:42:46 2 consistent about it, that people can't talk about why other
09:42:49 3 people decided to do something.

09:42:51 4 MR. LOEVY: Yes.

09:42:51 5 THE COURT: Okay. So you can't talk about that. I
09:42:54 6 mean, but as I said, I think it was yesterday, it may have
09:42:57 7 been the day before yesterday, but I think it was yesterday,
09:42:59 8 there's a difference between whether person A can speculate on
09:43:07 9 what person B's motivation was generally speaking, they can't,
09:43:15 10 and on the other hand, whether somebody could argue that it's
09:43:18 11 a reasonable inference from the facts that A led to B or that
09:43:23 12 B acted for this reason, which, you know, if there's evidence
09:43:27 13 to support it, you can do. Those are two different issues.
09:43:29 14 We are not in argument right now. We'll worry about argument
09:43:33 15 when I get to argument.

09:43:34 16 So he is not going to be able to answer why, you
09:43:37 17 know, somebody else gave him a deal.

09:43:39 18 Next.

09:43:40 19 MR. KULWIN: Next one, Judge, is Mr. Loevy when he
09:43:46 20 was examining Mr. Hawkins violated a motion in limine ruling
09:43:49 21 that you made in 2014. I have the transcript. I'll explain
09:43:53 22 briefly.

09:43:54 23 In 2014, Mr. Goodman tried to use this pros memo
09:43:59 24 argument, you got the pros memo from the government, it was
09:44:01 25 being passed around, you borrowed from me referring to it as a

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09:44:07 1 document. It didn't -- I didn't recognize it because --

09:44:11 2 THE COURT: Why didn't --

09:44:12 3 MR. KULWIN: I'm.

09:44:13 4 THE COURT: Contemporaneous objection rule.

09:44:16 5 MR. KULWIN: That's true.

09:44:18 6 THE COURT: What you're trying to do is prospectively

09:44:21 7 deal with it.

09:44:22 8 MR. KULWIN: I don't want it to happen on Kees or

09:44:24 9 Clay going forward and, you know, I do believe that Hogan,

09:44:29 10 because of what's happening with Hawkins, can simply say what

09:44:32 11 happened, what it was, and that should be the end of it,

09:44:34 12 Judge. You made it really clear --

09:44:37 13 THE COURT: How does he know what the other people

09:44:39 14 had at the MCC.

09:44:42 15 MR. KULWIN: It was his stuff.

09:44:43 16 THE COURT: That's not my question. How does he

09:44:47 17 know?

09:44:47 18 MR. KULWIN: Because he covered it.

09:44:49 19 THE COURT: He himself recovered had.

09:44:52 20 MR. KULWIN: My understanding is he had the marshals

09:44:54 21 for the guys from OCDETF go there or he was called by the MCC,

09:44:59 22 I am going on my memory from 20 years ago, but this is how I

09:45:03 23 recall it, it was a big deal, it was a big conning attempt at

09:45:09 24 the time and /STKPWHR-FRBLT the day it happened, they went

09:45:12 25 over there, they got it, they came back, it was a scheduling

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09:45:15 1 memorandum. When you ruled, Judge, you said it wasn't even a
09:45:19 2 close call.

09:45:19 3 THE COURT: Well, you know, as I've said to
09:45:23 4 everybody, I have made thousands of rulings in this case,
09:45:26 5 literally, I can't be expected to remember.

09:45:28 6 MR. LOEVY: May I? I'm sorry.

09:45:30 7 THE COURT: So what you're talking about right now is
09:45:33 8 you want to preclude questioning of this regarding Mr. Kees
09:45:36 9 who is the next witness.

09:45:38 10 MR. KULWIN: Yes, Judge.

09:45:39 11 THE COURT: Mr. Loevy.

09:45:39 12 MR. LOEVY: Your Honor, what Mr. Kulwin just showed
09:45:42 13 me is a ruling with Sexton, so during a sidebar of a state's
09:45:47 14 attorney who had nothing to do with Mr. Hogan.

09:45:49 15 THE COURT: Is anybody going to bother to show this
09:45:51 16 to me?

09:45:51 17 MR. KULWIN: Ms. Katz is. She's always ready, Judge.

09:45:55 18 MR. LOEVY: What we have done is since proved up what
09:45:57 19 was missing. You said you had no connection between the cross
09:46:00 20 memos and the underlying events and what Mr. Hawkins admitted
09:46:03 21 yesterday was, yes, I had the prosecution's memos --

09:46:06 22 THE COURT: Actually, he didn't. He said that he
09:46:08 23 didn't see it. He said these other people had the document,
09:46:11 24 they were telling him about it, and he didn't see it. That is
09:46:14 25 what he said.

09:46:14 1 MR. LOEVY: He said it both ways, your Honor.

09:46:18 2 THE COURT: You show me the transcript where he said
09:46:21 3 he actually had a document.

09:46:22 4 MR. KULWIN: Yesterday he testified --

09:46:24 5 THE COURT: The question on the table is for him.
09:46:26 6 That's going to be the next thing that happens.

09:46:49 7 You know, I think I actually -- I actually think that
09:47:00 8 I -- there's a bunch of stuff here, it's kind of out of
09:47:03 9 sequence, I think I actually need a couple pages prior to what
09:47:06 10 Ms. Katz handed me.

09:47:07 11 MR. KULWIN: Which pages do you need?

09:47:08 12 THE COURT: I have 2458 and 2459, but it looks like
09:47:12 13 the discussion at the sidebar started before that. I don't
09:47:14 14 know how much before.

09:47:16 15 MR. KULWIN: Okay. Can you grab that from the trial
09:47:19 16 two?

09:47:19 17 THE COURT: And there is a reference of -- there's a
09:47:22 18 reference on 2479 to an earlier sidebar, 2459.

09:47:32 19 MR. LOEVY: Page 32 and 33.

09:47:37 20 MR. KULWIN: 2479 you admonished.

09:47:39 21 THE COURT: I understand. I need the pages before
09:47:42 22 2458.

09:47:42 23 MR. KULWIN: Sure, Judge. Why don't we get you --

09:47:47 24 THE COURT: I may actually have all of this
09:47:50 25 somewhere. Can you tell me what date the --

09:47:54 1 MR. KULWIN: Yes.

09:47:55 2 THE COURT: If you just give me the date I will be
09:47:57 3 able to find it myself probably easier.

09:48:01 4 MR. KULWIN: Let me run to the closet and get that,
09:48:03 5 Judge.

09:48:03 6 THE COURT: Okay.

09:48:05 7 MR. KULWIN: She is in the closet getting it.

09:48:07 8 MR. LOEVY: Your Honor, would you like to see the
09:48:09 9 testimony you asked for?

09:48:11 10 THE COURT: Yeah. Do you have a page cite from the
09:48:14 11 realtime?

09:48:14 12 MR. LOEVY: The realtime it's page 32.

09:48:17 13 THE COURT: From the morning?

09:48:20 14 MR. ART: Afternoon of November 28th.

09:48:22 15 THE COURT: Afternoon of November 28th.

09:48:24 16 MR. LOEVY: Starting on page 32, line 17.

09:49:06 17 MR. ART: Your Honor, I have a paper copy if you'd
09:49:08 18 like.

09:49:08 19 THE COURT: It's the afternoon, you said page 32.

09:49:10 20 MR. LOEVY: Starting at line 9.

09:49:13 21 THE COURT: It's just taking a second for it to come
09:49:16 22 up here.

09:49:38 23 MR. LOEVY: The important part is on 33.

09:49:40 24 THE COURT: The important part is what I think is the
09:49:42 25 important part. I am reading it in context. Stop talking

09:49:44 1 until I ask you something.

09:49:46 2 Okay. So you are correct that on whatever -- I
09:50:21 3 assume that's your examination of Mr. Hawkins.

09:50:24 4 MR. LOEVY: Correct.

09:50:25 5 THE COURT: He says that he saw -- this is the day
09:50:28 6 before yesterday, he said that he saw the documents, they were
09:50:38 7 shown to him by Eugene Hunter.

09:50:42 8 "QUESTION: Those documents had the same facts that
09:50:44 9 later became part of your testimony, correct?

09:50:47 10 "ANSWER: Yes, sir.

09:50:47 11

09:50:48 12 "QUESTION: How do you guys get your hands on them?

09:50:50 13 "ANSWER: I guess they took them.

09:50:52 14 "QUESTION: Anybody ever explain to you how they took
09:50:54 15 them?

09:50:55 16 "ANSWER: No, because I wasn't interested."

09:50:57 17 So you're right that the previous day he testified
09:51:00 18 that he saw them. Yesterday, he testified that he didn't see
09:51:02 19 them.

09:51:02 20 MR. KULWIN: Right.

09:51:03 21 THE COURT: You're correct that he testified both
09:51:05 22 ways.

09:51:05 23 All right. So what I need to do now is I need to
09:51:09 24 look back at the full context of the ruling. Do you know what
09:51:19 25 date it was?

09:51:19 1 MR. KULWIN: April 2nd, 2014.

09:52:34 2 THE COURT: Okay. So what happened in the previous
09:52:37 3 trial is that it looks like it's right at the beginning of the
09:52:40 4 cross of Mr. Kees in that trial he was called by the defense.
09:52:47 5 Mr. Goodman says page 2458, there's information -- I am going
09:52:53 6 to paraphrase it. Mr. Kees admitted that during a meeting
09:52:57 7 with Mr. Hogan, he took the pros memo, short for prosecution
09:53:02 8 memo. Shared it. I asked what's the relevancy of it.
09:53:05 9 Mr. Goodman said it basically explains how they got the same
09:53:08 10 story about good exercise, good exercise, the quote that's
09:53:11 11 been used in the case.

09:53:12 12 I asked do you have a pros memo, Mr. Goodman says,
09:53:17 13 no. I say, does the pros memo say anything about good
09:53:21 14 exercise? Mr. Goodman says, I don't know that. I say, how do
09:53:24 15 you connect A with B? He says, well, I don't know how I can
09:53:26 16 connect it to good exercise, but it certainly shows they were
09:53:28 17 sharing information. And I say it's not -- you didn't make a
09:53:34 18 connection.

09:53:35 19 Okay. So do you have the pros memo?

09:53:38 20 MR. LOEVY: We have asked the government. They won't
09:53:40 21 give it to us.

09:53:41 22 THE COURT: Well, big surprise there.

09:53:42 23 MR. LOEVY: Well, it's part of the -- it should have
09:53:44 24 been in our view discoverable, but we did connect it is our
09:53:50 25 position.

09:53:50 1 THE COURT: It probably would be determined to be
09:53:53 2 work product. I can't guarantee that, but that's likely.

09:53:55 3 MR. LOEVY: Hawkins said, yes, it became the basis of
09:53:57 4 the facts. What the pros memo was, we know what it was, the
09:54:01 5 prosecution memo regarding the indictment, the RICO
09:54:04 6 indictment. Smith/Hickman is one of the predicate acts,
09:54:07 7 Hawkins has said, yes, these are the facts that became my
09:54:11 8 testimony.

09:54:11 9 Kees and hunter they want to call and say isn't it
09:54:16 10 true you had personal knowledge of it, they had access to the
09:54:18 11 government's memos laying out the indictment of which
09:54:21 12 Smith/Hickman was one of the predicates.

09:54:27 13 THE COURT: Let me ask this question, Mr. Kulwin. As
09:54:29 14 you stand there, do you know what Mr. Hogan would say this
09:54:35 15 about topic?

09:54:36 16 MR. KULWIN: I believe I do.

09:54:37 17 THE COURT: What.

09:54:37 18 MR. KULWIN: To the best of my knowledge he would say
09:54:39 19 it wasn't the pros memo, it was some form of scheduling forms
09:54:43 20 that talked about how they were going to put the trial
09:54:46 21 together. I can double-check with a phone call. It was not a
09:54:50 22 prosecution theory memo. That's my understanding as I recall
09:54:53 23 it. I haven't asked him specifically about it.

09:54:55 24 THE COURT: This ended up as a dispute that was
09:54:58 25 brought before any judge?

09:54:59 1 MR. LOEVY: Yes.

09:55:00 2 MR. KULWIN: Sure, it was one of the many, many
09:55:02 3 allegations of misconduct that went on during the El Rukn
09:55:05 4 hearings that was later reversed.

09:55:07 5 THE COURT: Presumably there was some sort of hearing
09:55:09 6 or testimony somewhere about this at some point in time in one
09:55:12 7 of those cases. If not testimony, at least there were briefs
09:55:15 8 filed.

09:55:16 9 MR. KULWIN: I mean, there were so many allegations
09:55:19 10 back then, Judge.

09:55:20 11 THE COURT: So, look, the stuff went in yesterday on
09:55:24 12 Hawkins, honestly without objection.

09:55:28 13 MR. KULWIN: Right.

09:55:28 14 THE COURT: And so you're telling me that you want to
09:55:34 15 be able to respond to it via Hogan, and you're also telling me
09:55:40 16 that you don't think that the plaintiff should be able to go
09:55:46 17 into it with the other witnesses who were involved. I mean, I
09:55:48 18 really think you're trying to have it both ways. I mean, you
09:55:50 19 guys -- to use a golf analogy, play it as it lies right now.
09:55:53 20 You are not asking to play it as you lies. You are asking to
09:55:57 21 make the plaintiff play it as a lies, but you get to improve
09:56:04 22 upon it. I don't know if you play golf.

09:56:07 23 MR. KULWIN: I caddied a lot.

09:56:09 24 THE COURT: Not good for your shoulders.

09:56:13 25 MR. KULWIN: Be that as it may, I don't really think

09:56:16 1 so. Let me get to the point. There was a motion in limine,
09:56:20 2 my -- the defense --

09:56:23 3 THE COURT: There was a motion in limine.

09:56:25 4 MR. KULWIN: There was a motion, a ruling, a ruling.

09:56:28 5 THE COURT: Okay.

09:56:28 6 MR. KULWIN: And like you said, there's thousands of
09:56:31 7 them and that one slipped my mind and I apologize for that.
09:56:34 8 Your rational on the ruling at the time was correct, it got
09:56:37 9 out, it's no different than if, you know, if something goes
09:56:44 10 wrong, okay, even if, you know, as you say, even if nobody
09:56:49 11 objects, if there is a violation, it could be cause for a
09:56:53 12 mistrial, these other things, fine. All we're saying is it
09:56:56 13 shouldn't be compounded but now it's out there. We are not
09:56:59 14 trying to improve our -- if he goes through it with five
09:57:04 15 different people, it still doesn't matter that Hogan is going
09:57:07 16 to say this is what it is.

09:57:09 17 THE COURT: May I ask this? What is it that you're
09:57:14 18 intending or proposing to ask Mr. Kees on this?

09:57:14 19 MR. LOEVY: Isn't it true you got a hold of the memos
09:57:18 20 -- isn't is true, that, Mr. Kees, you got a hold of the memos
09:57:20 21 laying out the prosecution's theory of the case, not what he
09:57:23 22 just described about a scheduling thing, it actually was a
09:57:25 23 preindictment prosecution memo, Judge Conlon did rule on it
09:57:29 24 just as you said, isn't it true you reviewed it before you
09:57:32 25 testified.

09:57:33 1 THE COURT: Did Mr. Kees testify about this on some
09:57:35 2 prior occasion?

09:57:36 3 MR. LOEVY: Yes, he has. He did get the memos. He
09:57:37 4 acknowledged he got the memos, he acknowledged that the shared
09:57:39 5 the memos with their other witness Eugene Hunter, who they're
09:57:43 6 going to call, in 1989 before they testified. So he had the
09:57:45 7 prosecution memos laying out the facts about which he later
09:57:50 8 testified. And by the way, he also says he thinks Hawkins had
09:57:53 9 them too so he contradicts Hawkins' second denial.

09:57:57 10 THE COURT: Mr. Kulwin do you disagree that Mr. Kees
09:58:00 11 has testified on some prior occasion whenever it was.

09:58:06 12 MR. KULWIN: I would have to see the transcript.

09:58:08 13 THE COURT: When did he testify about this?

09:58:09 14 MR. LOEVY: He testified about it in 1994, I believe
09:58:13 15 it was the Boyd case. I am going to pull it right now, your
09:58:16 16 Honor.

09:58:16 17 THE COURT: Okay.

09:58:18 18 MR. KULWIN: I believe what occurred, Judge.

09:58:20 19 MR. LOEVY: 93. I am handing you the transcripts
09:58:23 20 from Boyd, your Honor. He's testified about it in his
09:58:26 21 deposition.

09:58:26 22 THE COURT: This was Judge Conlon's case?

09:58:28 23 MR. LOEVY: This one was Aspen, but judge Conlon
09:58:32 24 wrote the opinion.

09:58:33 25 THE COURT: We are not going to go into the opinions

09:58:34 1 one way or the other. It's a point of reference for me.

09:58:37 2 So what page? You gave me a whole bunch of stuff,
09:58:41 3 what should I be looking at?

09:58:43 4 MR. LOEVY: I think the relevant page is 708.

09:58:46 5 THE COURT: Okay. Let me just page through.

09:58:49 6 MR. LOEVY: 708, 709.

09:58:51 7 THE COURT: Stop talking. Where is the testimony --
09:59:10 8 what page is the testimony on where he says what this document
09:59:13 9 was? On 708 he says I got a hold of some documents. He says
09:59:21 10 he claims that he picked them up by accident. He's shown
09:59:31 11 post-trial motion exhibits 12 and 13. He says those look
09:59:35 12 familiar. So it seems like those are the documents.

09:59:39 13 MR. LOEVY: Your Honor, I found --

09:59:40 14 THE COURT: What's the page where he says what the
09:59:42 15 contents are? Or is there a page? Do you have post trial
09:59:46 16 exhibits 12 and 13?

09:59:47 17 MR. LOEVY: Yes, what we have here, your Honor, if I
09:59:49 18 may is Judge Conlon's opinion stating as follows: In September
09:59:53 19 89, Derrick Kees stole internal pre indictment memorandum from
09:59:57 20 the U.S. Attorney's Office and disseminated these records
10:00:02 21 presence describing the government's theory of the case, the
10:00:05 22 evidence and prospective charges against each defendant as
10:00:08 23 well as other issues to El Rukn inmate witnesses, stolen
10:00:10 24 documents were seized from the cells of Kees, Hunter and
10:00:13 25 Hawkins at USA Hogan's request. That's our good faith basis

10:00:24 1 to ask the questions, your Honor.

10:00:24 2 MR. ART: For the record, Judge, the cite is United

10:00:24 3 States against Andrews.

10:00:28 4 MR. KULWIN: Whenever you're ready, Judge.

10:00:28 5 THE COURT: Go ahead.

10:00:28 6 MR. KULWIN: First of all, with all due respect to

10:00:31 7 Judge Conlon, there were a lot of factual findings made during

10:00:35 8 the El Rukn hearings, none of which were challenged by the

10:00:38 9 U.S. Attorney's Office at the time. The U.S. Attorney's

10:00:39 10 Office never cross-examined anybody on those issues. They

10:00:42 11 felt that all of it was --

10:00:45 12 THE COURT: Honestly, I am not really so much

10:00:47 13 concerned -- in fact, I am not at all concerned about any

10:00:50 14 findings. I am just trying to see if I can identify what the

10:00:53 15 exhibit are.

10:00:53 16 MR. KULWIN: And --

10:00:54 17 THE COURT: By the way, exhibits 12 and 13 were used

10:00:57 18 in open court, so that would seem to remove any work product

10:01:00 19 objection, assuming that those are what we are talking about

10:01:03 20 here.

10:01:04 21 MR. KULWIN: Right. And I don't believe that those

10:01:05 22 were the pros memos. That's why they were used in open court.

10:01:10 23 And the testimony that they are reading doesn't say I got the

10:01:12 24 pros memos. You know, Judge, this is pretty serious.

10:01:16 25 THE COURT: Yeah, but what you're -- the basis of

10:01:19 1 your argument where you started off is that there's no good
10:01:22 2 faith basis to ask the question. I'm just not seeing that
10:01:26 3 here.

10:01:26 4 MR. KULWIN: Wait a second, Judge. The basis of my
10:01:29 5 argument is that you previously ruled that it shouldn't come
10:01:31 6 in. We blew it. We didn't hear it. It shouldn't keep going.
10:01:35 7 If you're saying, look, you want it out and Hogan can't
10:01:39 8 explain it, we'll live with that, but it shouldn't keep going
10:01:42 9 forward. You made a good ruling the last time. They can't
10:01:46 10 connect it up. They don't have it. And there's no reason for
10:01:49 11 you to now vary from your prior ruling at this point.

10:01:51 12 THE COURT: Okay. So just to be clear about it, what
10:01:54 13 we are talking about here is not something where everybody
10:01:57 14 briefed something and argued it and I made a ruling like I've
10:02:00 15 done on several dozen things here. We are talking about a
10:02:04 16 ruling that I made in the middle of trial essentially that
10:02:07 17 there hadn't been a foundation connecting anything up and
10:02:11 18 therefore you couldn't go into it and more than that has been
10:02:13 19 done in this trial, and, again, it happened without objection.
10:02:17 20 So, look, I mean, I see two possibilities here. I'm not going
10:02:22 21 to retroactively go back and exclude testimony that nobody
10:02:26 22 asked me to exclude at the time. I'm not, period.

10:02:31 23 So to me there are only two possibilities.
10:02:33 24 Possibility number one is everybody plays it as it lies, we go
10:02:38 25 with Hawkins' testimony, nobody else gets to testify about it

10:02:41 1 and people argue whatever they want to argue from it. That's
10:02:44 2 number one.

10:02:45 3 Number two is both you get to ask Mr. Hogan about
10:02:52 4 whatever he has personal knowledge about and the plaintiff
10:02:55 5 gets to ask and both sides get to ask, you know, Mr. Kees and
10:02:59 6 whoever else is going to testify about, you know, who has
10:03:02 7 knowledge of this, about whatever they have personal knowledge
10:03:05 8 of. And I am not -- I don't see a third alternative. I don't
10:03:09 9 see -- it's non-appropriate alternative and this is the end of
10:03:12 10 this part of the discussion. It's not an appropriate
10:03:14 11 alternative to say the defendants get to respond to this by
10:03:17 12 eliciting information from Hogan and other witnesses that are
10:03:19 13 favorable to them but the plaintiffs don't get to ask anybody
10:03:23 14 else questions. That request is overruled.

10:03:25 15 So those are the other two possibilities. Let me
10:03:28 16 have your thoughts on those two possibilities. By the way, we
10:03:31 17 are now 35 minutes late with the jury. 35 minutes.

10:03:35 18 Okay. Yours first.

10:03:39 19 MR. KULWIN: I think it's important that Mr. Hogan be
10:03:42 20 able to respond.

10:03:42 21 THE COURT: Then I am not going to preclude asking
10:03:45 22 Mr. Kees because I do not agree with the argument that there
10:03:48 23 is no good faith basis. That's it.

10:03:50 24 MR. KULWIN: I'm sorry, there are two other points
10:03:52 25 with Mr. Kees. I apologize.

10:03:54 1 One point, I anticipate that the plaintiff is going
10:03:58 2 to go into a bunch of Mr. Kees' testimony concerning -- that
10:04:03 3 went on during the El Rukn hearing. What I'm concerned about.

10:04:06 4 THE COURT: What are we talking about?

10:04:08 5 MR. KULWIN: He is going to be saying I had a side
10:04:10 6 deal with Hogan, all that stuff. You know, that may or may
10:04:13 7 not be fair game. What I'm concerned about is it's going
10:04:18 8 to open the door or try to open the door later on or during
10:04:22 9 his testimony that these were all -- I don't want the
10:04:25 10 discussion what the purpose of the El Rukn hearings, what
10:04:29 11 happened at the El Rukn hearings.

10:04:30 12 MR. LOEVY: That's fine.

10:04:31 13 THE COURT: You are not planning to go into that. I
10:04:33 14 think that was a motion that I ruled on after briefing and I
10:04:36 15 precluded it. That I remember.

10:04:37 16 MR. KULWIN: Two last very minor, one minor, Mr. Kees
10:04:42 17 should be admonished by the Court before the jury comes in not
10:04:45 18 to mention the murder and not to mention Tredeste Murray.

10:04:49 19 MR. LOEVY: Now on our points, your Honor, nobody has
10:04:51 20 prepped Mr. Kees except possibly Mr. Hogan who does not know
10:04:56 21 this Court's motion in limine rulings. What we strongly
10:05:01 22 suggest is before he testifies your Honor explain to him and
10:05:04 23 we have handed you a copy of the ruling, there are four key
10:05:07 24 points, your ruling.

10:05:08 25 THE COURT: That's this thing?

10:05:09 1 MR. LOEVY: Yes, your Honor. The first, if you like,
10:05:11 2 I can summarize it. Either way.

10:05:14 3 THE COURT: Hang on a second. Let me just ask this
10:05:23 4 question. Again, I'm hoping you guys have a better memory
10:05:27 5 than I do. Did I do this last go around? Did I talk to Kees
10:05:31 6 before the testimony last go around about what he could and
10:05:35 7 couldn't say?

10:05:36 8 MR. NOLAND: I don't remember. I don't remember.

10:05:38 9 MS. GORMAN: I recall that you did, your Honor.

10:05:39 10 THE COURT: Okay. What day did he testify? It would
10:05:42 11 be helpful to me to be able to look at what I said because I
10:05:45 12 can just reread it.

10:05:47 13 MS. KATZ: April 22nd.

10:05:50 14 THE COURT: April 22nd. Do you have a page number
10:05:52 15 for me.

10:05:52 16 MS. KATZ: 2405, but there were some initial rulings.
10:05:57 17 It goes on for a little while. Let me see when he actually
10:06:01 18 starts testifying.

10:06:01 19 THE COURT: I can find it. You clued me in on it.
10:06:05 20 Let me see what I've got. It doesn't look like I did.

10:06:37 21 MR. LOEVY: We don't they you did.

10:06:39 22 THE COURT: I didn't.

10:06:41 23 MR. LOEVY: There's four key points.

10:06:44 24 THE COURT: Okay. What are the four?

10:06:45 25 MR. LOEVY: First one you ruled out the Tredeste

10:06:47 1 Murray stalking incident.

10:06:50 2 MR. KULWIN: We don't have they problem with that,
10:06:51 3 Judge. You already ruled on that.

10:06:52 4 MR. LOEVY: All of these are the ones you already
10:06:54 5 ruled on, your Honor.

10:06:56 6 The second one is.

10:06:57 7 THE COURT: Keep going.

10:06:58 8 MR. LOEVY: The second one is that any reference to
10:07:00 9 Nate's prior criminal record. I don't even know if he knows
10:07:03 10 about it, but that would be a disaster if he mentioned a prior
10:07:06 11 crime by Nate.

10:07:06 12 MR. KULWIN: Point on that, Judge.

10:07:08 13 THE COURT: Keep going.

10:07:10 14 MR. KULWIN: Sorry.

10:07:10 15 MR. LOEVY: No. 3 is in your opinion you ruled out
10:07:13 16 what he heard the next day about who committed the murders.
10:07:16 17 What you have allowed him to testify about is he got together
10:07:19 18 with the four guys and they all confessed to them but hearsay
10:07:22 19 about I heard from other people about what happened is barred
10:07:25 20 by your opinion.

10:07:26 21 And then the fourth point is the reasons why Fields
10:07:29 22 was chosen for the assignment. And then he is allowed --

10:07:35 23 THE COURT: There is a fifth point. I am looking at
10:07:38 24 pages 15 and 16. He can't testify about what Alan Knox told
10:07:41 25 him about the prior --

10:07:43 1 MR. KULWIN: Judge, I didn't hear you.

10:07:45 2 THE COURT: He can't testify about what Alan Knox
10:07:50 3 told him about the bribery of Judge Maloney.

10:07:56 4 MR. LOEVY: And I think you said what is in
10:07:59 5 defendants' proffer, which we handed you, you said they could
10:08:02 6 do the first six and a half lines, you said the first six and
10:08:06 7 a half lines of page 11 of defendants' response.

10:08:07 8 THE COURT: Yours is on page 15.

10:08:09 9 MR. LOEVY: Exactly.

10:08:09 10 THE COURT: Page 629 just so the record is clear.

10:08:16 11 So, look, it sometimes like I was comfortable enough
10:08:27 12 last go around to not admonish him about anything. And I just
10:08:36 13 -- I guess I'm really kind of disinclined to sit here and give
10:08:40 14 this guy a laundry list of six or seven things that he can't
10:08:44 15 testify about.

10:08:45 16 MR. LOEVY: Your Honor.

10:08:45 17 THE COURT: I think I'm entitled to rely -- listen
10:08:51 18 very carefully, I am entitled to rely on lawyers who know what
10:08:55 19 my rulings were and who know what the possibilities are if
10:08:58 20 someone runs afoul of them, I am entitled to rely on lawyers
10:09:03 21 on both sides asking careful questions that don't tread into
10:09:09 22 prohibited ground or invite the witness to do that.

10:09:11 23 What was the point you wanted to make?

10:09:13 24 MR. KULWIN: On that point, Judge, I'm basing my
10:09:16 25 examination of Mr. Kees of what was allowed at the last trial.

10:09:20 1 THE COURT: Right.

10:09:21 2 MR. KULWIN: I am actually using the questions and
10:09:24 3 answers.

10:09:24 4 THE COURT: Right.

10:09:25 5 MR. KULWIN: That have all been allowed. I don't
10:09:28 6 believe any of that crosses any lines.

10:09:29 7 THE COURT: I don't think we had a problem with his
10:09:31 8 testimony last time. I don't remember having one, so I don't
10:09:35 9 think we had any problems.

10:09:35 10 MR. KULWIN: You did no. And that's -- I'm just
10:09:38 11 telling you right now up front, that's what I am going to ask
10:09:42 12 about. Now, depending on the cross, if Mr. Loevy is going to
10:09:45 13 into this whole you guys were all conspiring, I have some
10:09:51 14 thoughts.

10:09:52 15 THE COURT: Conspiring about what?

10:09:54 16 MR. KULWIN: Putting the case on Mr. Fields. I'm not
10:09:57 17 going to go into what he was convicted for, but I am going to
10:10:00 18 test Mr. Kees' knowledge about whether he knew Mr. Fields was
10:10:03 19 in jail at the time this was going on and that he was
10:10:06 20 convicted for this crime at the time. Okay? I'm going to ask
10:10:10 21 him that. I don't know what he is going to say.

10:10:12 22 THE COURT: You're talking about in the '90s when all
10:10:14 23 of the El Rukn stuff was going on at the MCC did he know Mr.
10:10:18 24 Fields was in jail.

10:10:19 25 MR. KULWIN: Yeah, and convicted for the

10:10:20 1 Smith/Hickman crime. Good. Just wanted to know.

10:10:24 2 THE COURT: That's kind of the predicate of the case
10:10:26 3 that Mr. Fields was convicted of the Smith/Hickman. Do you
10:10:29 4 see a problem?

10:10:29 5 MR. LOEVY: No, as long as he doesn't elicit the
10:10:32 6 prior conviction.

10:10:32 7 MR. KULWIN: I am not planning on doing that.

10:10:34 8 THE COURT: What else?

10:10:35 9 MR. KULWIN: The last point, you did rule in the last
10:10:38 10 trial at page 2459-63 that the plaintiff could not attribute
10:10:42 11 the promise of Kees doing less than 99 years to O'Callaghan
10:10:45 12 under 404(b) because that comment is different than what's
10:10:52 13 alleged in the complaint.

10:10:52 14 THE COURT: Hang on a second.

10:10:55 15 MR. KULWIN: 2459-63 actually through 66.

10:11:05 16 THE COURT: I am looking at it right now.

10:11:08 17 MR. KULWIN: Sure, Judge.

10:12:00 18 THE COURT: So what it looks like that I did in the
10:12:04 19 actual ruling is at 2462 to 2463 that I said that the
10:12:10 20 plaintiff could not attribute the particular deal that's being
10:12:15 21 talked about there that Mr. Kees evidently thought he had,
10:12:18 22 that the plaintiff can't try to attribute that to Mr.
10:12:22 23 O'Callaghan. Is that what you're talking about?

10:12:24 24 MR. KULWIN: Yes, Judge.

10:12:24 25 MR. LOEVY: I am not sure.

10:12:25 1 THE COURT: That ruling stands.

10:12:26 2 THE COURT: Then you got to read the transcript,
10:12:29 3 which I am confident you have done. Have you read the
10:12:31 4 transcript?

10:12:31 5 MR. LOEVY: I have, your Honor.

10:12:33 6 THE COURT: Okay. That ruling stands.

10:12:35 7 MR. KULWIN: Thank you, Judge. I apologize.

10:12:36 8 THE COURT: And so you have a better sense of what
10:12:39 9 the deal is than I do, so if something is happening or
10:12:43 10 starting to happen that sounds like it's going awry, jump on
10:12:46 11 your feet and say objection, I need a sidebar. Okay?

10:12:50 12 MR. KULWIN: Judge, I'll stand up for sure.

10:12:52 13 MR. LOEVY: Your Honor, may I ask so we don't have a
10:12:55 14 sidebar.

10:12:55 15 THE COURT: I'll give you five minutes to read the
10:13:01 16 gosh darn transcript. What are we on, Day 11 now? I've lost
10:13:05 17 track. It's been so much fun. I've got 12 United States
10:13:10 18 citizens sitting back there who believe that they were
10:13:14 19 supposed to start this trial at 9:30. Okay? I know I've got
10:13:17 20 issues in the morning, but we have been talking for 40 minutes
10:13:20 21 now. I'm done talking. I am bringing the jury out. That's
10:13:25 22 it.

10:13:25 23 MR. KULWIN: Are you giving them five minutes to read
10:13:27 24 the transcript or bringing the jury out.

10:13:30 25 MR. ART: I've got it.

10:13:30 1 THE COURT: Some of the folks can look at it and
10:13:33 2 stick it in front of Mr. Loevy's face.

10:14:51 3 (The jury enters the courtroom.)

10:14:53 4 THE COURT: Okay. Everybody can have a seat. Good
10:15:00 5 morning, ladies and gentlemen. I apologize. You have been
10:15:03 6 sitting back there for 40 to 45 minutes.

10:15:06 7 You know, I have told the lawyers that we need to try
10:15:08 8 to get issues that are going to come up the next day dealt
10:15:11 9 with at the end of the previous day, but for various reasons
10:15:14 10 that's not always possible, so we were dealing with a bunch of
10:15:17 11 issues that frankly probably saved about seven sidebars, so
10:15:21 12 just take that on faith for present purposes.

10:15:24 13 As I told you, you know, a question was asked
10:15:28 14 yesterday by one of the jurors about scheduling, and so let me
10:15:32 15 just talk about that in general here. So that little sheet
10:15:35 16 that I had given at the start of the trial I think gave you a
10:15:40 17 schedule through -- I've got it right here through a week from
10:15:45 18 Friday, so the 9th of December. As you may recall as I told
10:15:49 19 you at the opening, I don't have any control over how long the
10:15:55 20 jury's deliberations go. That's up to the jury. How long or
10:16:01 21 how short it is is going to be completely up to you.

10:16:04 22 What I can tell you and I have to -- you have to take
10:16:06 23 everything with a grain of salt because I told you you were
10:16:09 24 going to start at 9:30 this morning and here it is 10:15.
10:16:12 25 It's my expectation that we will finish with the witnesses and

10:16:16 1 the evidence and the arguments by the end of next week. Okay?
10:16:20 2 It may be a little before that. I can't guarantee it won't be
10:16:24 3 a little after that, but my expectation is we will finish by
10:16:27 4 the end of next week. Now, what I can't tell you is how long
10:16:30 5 you're going to deliberate. That's up to you. I don't have
10:16:32 6 any control over that. In terms of scheduling out beyond
10:16:35 7 that, I think it's reasonable to think that you might want to
10:16:37 8 think about, you know, that following week involving some
10:16:42 9 deliberations, and in terms of the scheduling for that, you
10:16:45 10 know, what are the hours? I am going to leave that up to you
10:16:48 11 with, you know, I'm sort of the Court of Appeals on the hours.
10:16:51 12 I mean, if you were to say we're going to come in from 10:00
10:16:55 13 to 12:00 and then go home, I'd probably say, no, not going to
10:16:58 14 do that, but I am not going to make you work past the normal
10:17:01 15 time we have been working. You can use the schedule that we
10:17:04 16 have been using as a predictable guide. I hope that's enough
10:17:08 17 information. I should have more information at the beginning
10:17:10 18 of next week. I have a sense of who is left, but I don't have
10:17:13 19 a sense of how long everything is going to take. We are ready
10:17:16 20 to resume with I think the defendants' examination of Ms.
10:17:19 21 Lyon. Do you understand you are still under oath?

10:17:22 22 THE WITNESS: I do, your Honor.

10:17:23 23 THE COURT: Mr. Noland, you can go ahead.

10:17:24 24 - - -

10:17:24 25 ANDREA LYON, CROSS-EXAMINATION CONTINUED

10:17:24 1 BY MR. NOLAND:

10:17:26 2 Q. Ms. Lyon, if we could just remind for the jury, you are

10:17:30 3 the post conviction criminal defense attorney for a man by the

10:17:35 4 name of Fulton?

10:17:36 5 A. Jon Fulton.

10:17:37 6 Q. And could you just remind the jury, Mr. Fulton was

10:17:43 7 convicted of a homicide?

10:17:44 8 A. He was.

10:17:44 9 Q. And when did that occur, when did the homicide occur?

10:17:49 10 A. 2003.

10:17:50 11 Q. And Mr. Fulton was then tried for that case in 2006, true?

10:17:54 12 A. It was either late 2005 or 2006, I am not a hundred

10:18:00 13 percent sure.

10:18:00 14 Q. And you were not the lawyer?

10:18:01 15 A. I was not.

10:18:01 16 Q. Who represented Mr. Fulton at that trial?

10:18:03 17 A. That was Mr. Zinger and Mr. /PWO*EU.

10:18:05 18 Q. All right. Elliot zinger, is that his name?

10:18:08 19 A. Correct.

10:18:09 20 Q. And so then from 2003 to 2006, I know you weren't

10:18:14 21 involved, but that would have been the pretrial period with

10:18:16 22 discovery and documents exchanged and motions filed, things

10:18:19 23 like that?

10:18:19 24 A. Yes, I would assume so.

10:18:22 25 Q. And then Mr. Fulton was convicted at that trial in 2006 of

10:18:28 1 that murder?

10:18:28 2 A. There was a mistrial and then at the second trial, he was
10:18:31 3 convicted.

10:18:31 4 Q. Thank you.

10:18:31 5 And then you got involved after that in 2011 to begin
10:18:37 6 your representation of Mr. Fulton; is that right?

10:18:40 7 A. On the post conviction, correct.

10:18:41 8 Q. On a post conviction petition.

10:18:43 9 And then in connection with that, you sent some
10:18:50 10 subpoenas -- strike that.

10:18:51 11 In connection with that, you gathered the files of
10:18:54 12 the prior criminal defense attorneys?

10:18:56 13 A. I did.

10:18:57 14 Q. And did you gather, I think you said the trial lawyers'
10:19:02 15 file?

10:19:02 16 A. The trial lawyers' file, the appellate lawyers' file,
10:19:06 17 there was some of the file was from a family lawyer, I got it
10:19:14 18 from them as well, it took me a little while to get
10:19:18 19 everything, but I did.

10:19:18 20 Q. And then after that, you spent subpoenas to the police
10:19:23 21 department, I'm sure you did some other things, but you sent
10:19:25 22 some subpoenas to the police department to follow up and to
10:19:31 23 make sure you had all the paperwork?

10:19:32 24 A. That's correct, but I couldn't do that until after I filed
10:19:35 25 the post conviction petition because you are not allowed to

10:19:38 1 send a subpoena unless you have a case that's going on.

10:19:41 2 Q. So you filed that. And once you filed that petition, you
10:19:45 3 you had a case number, you had the authority to issue a
10:19:48 4 subpoena to various entities to get documents?

10:19:51 5 A. Correct.

10:19:52 6 Q. And one of those entities was the Chicago Police
10:19:54 7 Department?

10:19:54 8 A. Correct.

10:19:54 9 Q. And I think you testified that in response to one of those
10:19:57 10 subpoenas, you got an investigative file; is that right?

10:20:01 11 A. I got the file, yes, the police reports.

10:20:04 12 Q. And I believe correct me if I'm wrong, you said there were
10:20:08 13 about 12 pages in there that you hadn't seen before?

10:20:10 14 A. Not from the subpoena. That's from the basement file.

10:20:13 15 Q. Okay. And you did receive the basement file?

10:20:15 16 A. Later, yes.

10:20:16 17 Q. Okay. And so that's what I wanted to talk about.

10:20:18 18 So from the basement file, you did receive that,
10:20:22 19 correct?

10:20:23 20 A. Ultimately, yes.

10:20:23 21 Q. And you looked at that file and that's the file that
10:20:27 22 you're saying that there were -- you think there were about 12
10:20:31 23 pages in there that you didn't recognize, hadn't seen before?

10:20:35 24 A. That's correct.

10:20:35 25 Q. And you advised the plaintiff's counsel that you didn't

10:20:40 1 recognize those pages and you hadn't seen them before?

10:20:42 2 A. I did tell them at some point. I don't think that's the
10:20:44 3 first thing I did.

10:20:46 4 Q. Oh, yeah, I'm not suggesting that. At some point?

10:20:48 5 A. I did tell them, yes.

10:20:49 6 Q. Okay. So and I think you said of those 12 pages, and I
10:20:54 7 know a couple of them I showed to you yesterday, a couple of
10:20:57 8 the pages were not particularly important; is that fair?

10:21:01 9 A. Not -- I mean, they varied in importance in my view.

10:21:08 10 MR. NOLAND: If I could have the ELMO, your Honor.

10:21:09 11 THE COURT: Sure. You told me that before, and I
10:21:12 12 didn't catch up with you. There you go.

10:21:17 13 BY MR. NOLAND:

10:21:33 14 Q. Ms. Lyon, is this one of the pages that was you hadn't
10:21:40 15 seen before that was provided to you?

10:21:42 16 A. Correct.

10:21:42 17 Q. And it's dated January 19th, 2010; is that right?

10:21:46 18 A. Yes.

10:21:46 19 Q. And it looks like it's a to/from memoranda from chief
10:21:55 20 Thomas Byrne of the Chicago Police Department to A1 /TPOPB
10:22:02 21 /SKPWHR0E /WAOEURB in the Chicago Police Department, right?

10:22:05 22 A. That's what it says it is, yes.

10:22:06 23 Q. We are just reading.

10:22:08 24 And the subject line is a request for information
10:22:13 25 office of legal affairs in a case called l-a-n-z-a, v. City

10:22:18 1 for the -- that's what it states?

10:22:22 2 A. Correct.

10:22:22 3 Q. It would appear that this is a request for information in

10:22:25 4 a civil case for information with respect to?

10:22:29 5 A. That's what it looks like to me, yes.

10:22:31 6 Q. And it's dated 2010, right?

10:22:33 7 A. Correct.

10:22:33 8 Q. And so the files that you had gathered from the prior

10:22:39 9 attorneys on the case would have within files that they had

10:22:43 10 created before 2010; is that right?

10:22:45 11 A. Oh, of course, yes.

10:22:46 12 Q. I didn't identify this for the record. Thank you.

10:22:53 13 This is -- actually, it's plaintiff's 638 and it's

10:23:01 14 page 33498.

10:23:05 15 So this wouldn't have been a document that you would

10:23:09 16 have expected to find in the files that you had gathered

10:23:12 17 because it actually didn't even exist until after they were

10:23:14 18 done with the case?

10:23:15 19 A. That's correct.

10:23:16 20 Q. Am I right that this would have been one of the documents

10:23:19 21 that was not particularly important?

10:23:20 22 A. That's correct. Others were, this was not.

10:23:36 23 MR. NOLAND: Your Honor, may I switch to the

10:23:38 24 computer, please?

10:23:39 25 THE COURT: Yep.

10:23:41 1 MR. NOLAND: Laura, can you pull up page defense 249,
10:23:54 2 Part 2-878.
10:23:58 3 BY MR. NOLAND:
10:24:11 4 Q. This was the document that was I think shown to you
10:24:14 5 yesterday, one of the documents you said was important that
10:24:17 6 was new to you?
10:24:18 7 A. Yes.
10:24:24 8 MR. NOLAND: Laura, if you could just show the whole
10:24:26 9 document. If you could highlight in the top left-hand corner
10:24:33 10 it says OCC 10 March '03 is that right?
10:24:38 11 THE WITNESS: That's what it says.
10:24:39 12 BY MR. NOLAND:
10:24:39 13 Q. That's what it says.
10:24:42 14 MR. NOLAND: If you could pull upside by side with
10:24:44 15 this document defense 249, part 3, page 1248.
10:24:56 16 BY MR. NOLAND:
10:24:58 17 Q. Down in the bottom of that document, could you highlight
10:25:01 18 the received 2/20/04 and also the attorney for defendant.
10:25:09 19 BY MR. NOLAND:
10:25:10 20 Q. Ms. Lyon, can you explain to the ladies and gentlemen of
10:25:13 21 the jury what this document is?
10:25:13 22 A. This is a way of sort of trying to keep track of discovery
10:25:18 23 that was instituted after some problems between the state. So
10:25:25 24 when the state turns over certain documents to you, they'll
10:25:29 25 give you a list and it will say this many police reports or

10:25:32 1 this many photos and then what you should do as a defense
10:25:35 2 attorney is look through and make sure that the list and what
10:25:38 3 you got are the same and if it is, then you sign and say I got
10:25:41 4 that. That's basically what it's for.

10:25:50 5 MR. NOLAND: Laura, if you could highlight the line,
10:26:00 6 can you also highlight the top left-hand corner of the other
10:26:03 7 document.

10:26:10 8 THE WITNESS: I see that.

10:26:10 9 BY MR. NOLAND:

10:26:11 10 Q. So this receipt for discovery, Ms. Lyon, indicates that on
10:26:16 11 February 20th, 2004, by the way, this document, this receipt
10:26:26 12 for discovery was signed by it appears to be Elliot zinger,
10:26:29 13 Mr. Fulton's attorney at the time?

10:26:31 14 A. I assume so. His handwriting is a little difficult to
10:26:34 15 read, but I shouldn't talk about anybody else's handwriting.
10:26:38 16 Mine is bad too.

10:26:39 17 Q. So the document shows that Mr. Zinger who was Mr. Fulton's
10:26:46 18 attorney acknowledged receipt of in the middle here one
10:26:54 19 page-four photos, page marked OCC equal 10 March '03; is that
10:26:54 20 right?

10:26:59 21 A. That's what he signed, yes.

10:27:00 22 Q. And that's this document, right?

10:27:07 23 MR. NOLAND: Can you take this stuff off, Laura?
10:27:10 24 Highlight again the 0 cc 10 March 3.

10:27:14 25 THE WITNESS: It's not necessary. It appears to me

10:27:17 1 that this was referring to this document. It was not in the
10:27:21 2 file nor produced by the police in response to the subpoena.
10:27:25 3 It was in the basement file. I can't tell you if he got it or
10:27:28 4 didn't get it. I can tell you it wasn't there.

10:27:30 5 MR. NOLAND: I am not sure there is a question
10:27:32 6 pending.

10:27:32 7 THE WITNESS: I'm sorry.

10:27:33 8 THE COURT: The question was is that this document?
10:27:35 9 The answer is stricken as nonresponsive.

10:27:40 10 THE WITNESS: Sorry.

10:27:41 11 BY MR. NOLAND:

10:27:42 12 Q. Ms. Lyon, this receipt for discovery shows that the on
10:27:45 13 February 20th, 2004, that the state's attorney's office
10:27:49 14 provided these four photographs to Mr. Zinger, Mr. Fulton's
10:28:02 15 attorney on that date; is that right?

10:28:04 16 A. It appears to say that, yes.

10:28:29 17 MR. NOLAND: Laura, could you also pull up page on
10:28:35 18 the left, replace it with page D 249 Part 2, 119.

10:28:48 19 BY MR. NOLAND:

10:28:49 20 Q. Ms. Lyon, is this I'm showing you a crime scene processing
10:28:54 21 report. Is this one of the documents that was -- you say was
10:29:02 22 new to you?

10:29:02 23 A. Yes, although the information was not, you know, not new
10:29:11 24 in the same way other things were, but, yes.

10:29:14 25 Q. It was a document that you hadn't recognized as receiving

10:29:17 1 from Mr. Zinger's file?

10:29:19 2 A. Or Mr. /PWO*EU's file or Mr. Pullman's file or the Chicago
10:29:26 3 Police Department for that matter.

10:29:28 4 MR. NOLAND: Judge.

10:29:29 5 THE COURT: Overruled. I assume that was an
10:29:32 6 objection.

10:29:32 7 BY MR. NOLAND:

10:29:33 8 Q. Okay. Going back to the receipt for discovery on the
10:29:36 9 right?

10:29:36 10 A. Yes, sir.

10:29:37 11 Q. Do you see?

10:29:40 12 MR. NOLAND: Laura, if you could highlight the four
10:29:42 13 lines down.

10:29:44 14 BY MR. NOLAND:

10:29:46 15 Q. This would indicate that a crime scene, one page crime
10:29:51 16 scene processing report was also tendered to Mr. Zinger on
10:29:57 17 February 20th of 2004; is that right?

10:29:59 18 A. Yes, it does say that. I don't know if it's the same one,
10:30:02 19 but, yes.

10:30:12 20 MR. NOLAND: Laura, can you pull up page -- leave
10:30:16 21 that receipt for discovery there -- page 122, Part 2. Can you
10:30:38 22 highlight, Laura, in the top left-hand -- leave it on the
10:30:41 23 screen there. Just highlight it. Don't tear it out, leave
10:30:46 24 the bomb and arson section, detective division.

10:30:53 25 BY MR. NOLAND:

10:30:54 1 Q. Is this one of the pages, Ms. Lyon, that you didn't get
10:30:58 2 from the prior defense counsel?

10:30:59 3 A. From any of the sources I previously discussed, yes.

10:31:07 4 MR. NOLAND: Laura, could you also highlight where I
10:31:10 5 put that cross there, two-page bomb and arson worksheet.

10:31:15 6 BY MR. NOLAND:

10:31:16 7 Q. Again, Ms. Lyon, it would appear on February 20th, 2004,
10:31:20 8 Mr. Zinger signed for a receipt acknowledging that he had this
10:31:23 9 document too; is that right?

10:31:25 10 A. I am not sure that I can say that because there is a
10:31:28 11 difference between a report and a worksheet.

10:31:32 12 Q. Well, in the top left-hand corner, Ms. Lyon, it states
10:31:36 13 this is a bomb and arson worksheet is that true?

10:31:39 14 A. It does.

10:31:41 15 Q. And on the right side --

10:31:44 16 A. I can't say. I don't know.

10:31:45 17 THE COURT: The question was.

10:31:48 18 BY MR. NOLAND:

10:31:48 19 Q. On the right side it says bomb and arson worksheet?

10:31:51 20 A. It does, it does.

10:31:54 21 Q. Laura, can you go to the very next page? Ms. Lyon, this
10:31:58 22 is the second page of that bomb and arson worksheet?

10:32:02 23 A. It's the second page, yes, of that report.

10:32:05 24 Q. And this is another page that you said you hadn't received
10:32:09 25 from prior --

10:32:11 1 A. From all the other sources we discussed, yes.

10:32:17 2 MR. NOLAND: Laura, can you go to page 2, part 1161.
10:32:27 3 Can you take the highlighting off of the bomb and arson
10:32:30 4 worksheet. Actually, you know, you can leave it on there.
10:32:33 5 Highlight the next two lines down, the vehicle tow report, a
10:32:39 6 two-pager. Yeah, there you go.

10:32:49 7 BY MR. NOLAND:

10:32:50 8 Q. Showing the witness page 1161 on the left, Ms. Lyon,
10:32:54 9 again, this is another page that you're saying you hadn't got
10:32:59 10 from the prior source; is that right?

10:33:01 11 A. Correct.

10:33:01 12 Q. And, again, on the discovery receipt, Mr. Zinger received
10:33:04 13 it from the state on February 20th, 2004; is that right?

10:33:07 14 A. He signed that receipt, yes.

10:33:36 15 MR. NOLAND: Laura, if you could go to the next page
10:33:38 16 of the discovery receipt which would be 1249, please. If you
10:33:50 17 could highlight the four lines down, it says 38 pages, GPRs.

10:34:06 18 Can you pull up, Laura, page number -- on the left,
10:34:14 19 page number 1173, please.

10:34:22 20 BY MR. NOLAND:

10:34:22 21 Q. Ms. Lyon, is this page 1173 a general progress report that
10:34:28 22 you say you hadn't received from those other sources?

10:34:31 23 A. That's correct.

10:34:35 24 MR. NOLAND: Could you go, Laura, to 1175, please.

10:34:45 25 BY MR. NOLAND:

10:34:47 1 Q. Ms. Lyon, is this another general progress report that you
10:34:50 2 hadn't received from the other sources?

10:34:52 3 A. That's correct.

10:34:52 4 Q. And then if you go to page 1176, Laura.

10:35:02 5 BY MR. NOLAND:

10:35:03 6 Q. Am I right that this is another general progress report
10:35:06 7 that you didn't receive from those other sources?

10:35:09 8 A. Correct.

10:35:09 9 Q. On the right side we have the discovery receipt again
10:35:11 10 signed on February 20th, 2004, by Mr. Fulton's attorney that
10:35:17 11 he does acknowledge receiving 38 general progress reports that
10:35:20 12 day?

10:35:21 13 A. He signed that receipt, yes. It appears that way. I
10:35:28 14 wasn't there.

10:35:28 15 Q. It would appear?

10:35:29 16 A. It would appear that way, yes.

10:35:30 17 Q. It would appear that he was signing receipt acknowledging
10:35:34 18 receipt of all of these documents we have been talking about
10:35:36 19 here today is that true?

10:35:37 20 A. It would so appear, yes.

10:35:46 21 MR. NOLAND: Laura, could you pull up page
10:35:51 22 defendants' 249, part 3, why don't we put this on the right as
10:35:58 23 well, take off the other discovery receipt. 1278, part 3.

10:36:15 24 Could you pull up, Laura, on the left side of the
10:36:19 25 screen page defense 249, Part 2, page 011.

10:36:34 1 Laura, could you highlight the bottom of the
10:36:38 2 right-hand portion of the screen page 1278. And could you
10:36:49 3 actually put that document on the left back to the way it was,
10:36:52 4 please.

10:36:58 5 Laura, could you highlight the part beginning with
10:37:01 6 all discovery equals all the way to the end of that paragraph,
10:37:08 7 the entirety.

10:37:11 8 BY MR. NOLAND:

10:37:12 9 Q. Ms. Lyon, this would appear to be another discovery
10:37:14 10 receipt signed by Mr. Zinger in connection with his
10:37:19 11 representation of Jon Fulton on September the 2nd, 2005; is
10:37:19 12 that right?

10:37:24 13 A. That's what it appears to be, yes.

10:37:26 14 Q. And can you read the part beginning with all discovery
10:37:30 15 equals just into the record, please, so the jury can hear it?

10:37:34 16 A. All discovery equals page numbers 5 equals 1 through 1241,
10:37:42 17 period. Parentheses, because of scrivener's error, pages 266
10:37:50 18 and 571 through 579 do not exist, close parentheses, period.
10:37:56 19 This packet of discovery includes, there's something that's
10:37:58 20 crossed out there, materials previously tendered from defense
10:38:02 21 to state and previously tendered from state to defense,
10:38:07 22 period.

10:38:08 23 Q. So it looks like during the course of the pretrial
10:38:11 24 proceedings before Mr. Fulton's trial that the parties were --
10:38:16 25 meaning the prosecution and the defense, were exchanging their

10:38:19 1 documents and numbering for each other in connection with this
10:38:23 2 discovery receipt; is that fair?

10:38:25 3 A. It does appear that way, yes.

10:38:29 4 MR. NOLAND: Laura, if you could highlight the bottom
10:38:31 5 right-hand corner, the circled 1 there on page defendant 249,
10:38:37 6 page 11.

10:38:39 7 BY MR. NOLAND:

10:38:40 8 Q. That would appear to be a 1, correct?

10:38:41 9 A. It looks like it to me, or it could be a dash if you're
10:38:45 10 looking at it the other way.

10:38:46 11 Q. It may be hard to see but on the right-hand side of this
10:38:49 12 screen at the bottom, Laura, can you highlight the RD number?

10:38:52 13 It's actually vertical, H J. 228346. That would appear --
10:39:01 14 that's the RD number for the case for which Mr. Fulton was
10:39:05 15 convicted, the murder case?

10:39:06 16 A. Yes, that is.

10:39:06 17 Q. So that's page 1, right? It appears to be page 1?

10:39:12 18 A. I would assume so.

10:39:14 19 MR. NOLAND: Laura, can you go to the next one, page
10:39:16 20 2, which would be -- in the bottom right-hand corner we have
10:39:21 21 page 2.

10:39:22 22 BY MR. NOLAND:

10:39:23 23 Q. Right?

10:39:23 24 A. Yes, that says page 2.

10:39:26 25 Q. Can you go to the next page, Laura, page 3. It appears to

10:39:32 1 be page 3, correct?

10:39:33 2 A. Yes.

10:39:33 3 Q. And those Bates stamps were in order. There's page 4.

10:39:40 4 And I am not going to go through them obviously until we get

10:39:46 5 to the numbers. I want to focus your attention on the

10:39:48 6 right-hand side of the screen it says because of scrivener's

10:39:52 7 error pages 266 and 571 through 579 don't exist. Do you see

10:39:59 8 that?

10:39:59 9 A. I do see that. I said that a moment ago.

10:40:02 10 MR. NOLAND: Laura, can you go to page defense page

10:40:18 11 274, please. Can you highlight the circled number in the

10:40:26 12 bottom right-hand corner. Screen.

10:40:28 13 BY MR. NOLAND:

10:40:28 14 Q. That's page 264, right?

10:40:30 15 A. That's what it looks like, yes.

10:40:31 16 Q. Can you go to just the next page in the entire document.

10:40:35 17 Just go to the next page, page 265.

10:40:37 18 A. I see it.

10:40:38 19 Q. Can you highlight that, Laura. I just want you to go to

10:40:44 20 the very next page and see if it's 266 or some other number.

10:40:49 21 BY MR. NOLAND:

10:40:49 22 Q. Now, this very next page is 267, do you see that?

10:40:53 23 A. I do.

10:40:53 24 Q. And again the Bates number on this one, Laura is what --

10:40:59 25 Ms. Lyon -- actually, on the bottom right?

10:41:03 1 A. I see that.

10:41:03 2 Q. Okay. And then there's it's page 276, right?

10:41:09 3 A. That's what it says, yes.

10:41:11 4 THE COURT: 267. You're talking about the lower
10:41:16 5 right-hand corner.

10:41:16 6 THE WITNESS: 2-276.

10:41:19 7 BY MR. NOLAND:

10:41:19 8 Q. Just so we're clear and probably confused everybody, the
10:41:22 9 circled number in handwriting is 267?

10:41:25 10 A. Correct.

10:41:25 11 Q. And then the number it starts with D 0249, Part 2, 276,
10:41:31 12 right?

10:41:31 13 A. Correct.

10:41:33 14 MR. NOLAND: Laura, if you could go to the prior page
10:41:36 15 again.

10:41:41 16 BY MR. NOLAND:

10:41:41 17 Q. And the prior page is 265, so there is a gap between 265
10:41:45 18 and 266, right?

10:41:46 19 A. Correct.

10:41:48 20 Q. And there is the 275 and 276 showing that these are in
10:41:52 21 order, right?

10:41:52 22 A. In order as produced at this time it looks like to me,
10:41:55 23 yes.

10:41:56 24 Q. And, again, referring to the right-hand side of the screen
10:41:58 25 it said because of scrivener's error pages 266 and 571 through

10:42:05 1 579 do not exist. That would appear that that's a reference
10:42:08 2 to 266 does not exist, right?

10:42:10 3 A. That's what it appears to be, yes.

10:42:13 4 MR. NOLAND: Laura, can you go to page 578 of Part 2
10:42:33 5 on the right-hand side of the screen, sorry, on the left-hand
10:42:36 6 side.

10:42:36 7 BY MR. NOLAND:

10:42:36 8 Q. Now, I want to talk about the scrivener's error again for
10:42:39 9 pages 571 through 579. Here's page 569?

10:42:43 10 A. Um-hmm.

10:42:44 11 Q. Which has the typewritten Bates stamp on the bottom of
10:42:47 12 578?

10:42:48 13 A. I see that.

10:42:49 14 Q. Okay?

10:42:50 15 MR. NOLAND: Laura, go to the next page, please, the
10:42:53 16 very next page in the exhibit.

10:42:54 17 BY MR. NOLAND:

10:42:55 18 Q. This would be 570, so we have 569 and 570, right?

10:43:00 19 A. Um-hmm.

10:43:01 20 Q. Let's see if the next one is 571 or if it skips to 580.
10:43:07 21 Go to the next page, Laura. The very next page in the Bates
10:43:11 22 range on the handwritten range, it's 580 and in the Bates
10:43:15 23 range on the bottom which is sequential is also 580, do you
10:43:19 24 see that?

10:43:20 25 A. Yes, I do.

10:43:20 1 Q. Again, this would appear to be reflecting the scrivener's
10:43:24 2 error that is noted in receipt for discovery which Mr. Zinger
10:43:27 3 acknowledged signing and getting these documents on September
10:43:33 4 2nd, 2005?

10:43:34 5 A. That would be correct.

10:43:35 6 Q. Okay?

10:43:47 7 MR. NOLAND: Lawyer are, go --

10:43:48 8 BY MR. NOLAND:

10:43:49 9 Q. Ms. Lyon, going back to the documents we talked about
10:43:52 10 earlier, can you pull up once again those photographs page
10:44:00 11 Part 2, 878. Can you highlight that number in the bottom
10:44:10 12 reasoned. There you go 888.

10:44:10 13 BY MR. NOLAND:

10:44:16 14 Q. Do you see there again is a circle of '888 on this
10:44:21 15 grouping of four photographs that you said -- that you hadn't
10:44:25 16 seen before when you gathered the documents, right?

10:44:27 17 A. From all the different sources, that's correct.

10:44:29 18 Q. And this receipt for discovery would indicate that
10:44:36 19 Mr. Zinger actually got this document again on September the
10:44:39 20 2nd, 2005, in advance of Mr. Fulton's criminal trial; is that
10:44:39 21 right?

10:44:45 22 A. He signed the receipt, yes.

10:44:51 23 MR. NOLAND: Laura, if you could go to page Part 2,
10:44:55 24 119.

10:45:04 25 BY MR. NOLAND:

10:45:05 1 Q. This is the crime scene processing report that we talked
10:45:08 2 about earlier, the other receipt for discovery showed had been
10:45:12 3 tendered, right?

10:45:13 4 A. Yes, that Mr. Zinger signed.

10:45:14 5 Q. And again on this page, there's page 109 in this sequence
10:45:17 6 of 1 through 1241 on the receipt on the right-hand side of the
10:45:22 7 screen, right?

10:45:23 8 A. Correct.

10:45:29 9 MR. NOLAND: Laura, if you could pull up on the left,
10:45:33 10 page 2-12.

10:45:33 11 BY MR. NOLAND:

10:45:37 12 Q. Here is that bomb and arson worksheet again that we looked
10:45:40 13 at a few minutes ago, right?

10:45:42 14 A. Yes, sir.

10:45:42 15 Q. Is there a handwritten number in the bottom right-hand
10:45:45 16 side again?

10:45:45 17 A. There is.

10:45:46 18 Q. What's that?

10:45:46 19 A. 112 it appears.

10:45:49 20 MR. NOLAND: Laura, can you go to the next page of
10:45:53 21 page 123.

10:45:56 22 BY MR. NOLAND:

10:45:56 23 Q. Again, in the bottom right-hand corner there is a
10:45:59 24 handwritten 113, right?

10:46:00 25 A. Yes.

10:46:00 1 Q. And these are all the pages that you hadn't received
10:46:03 2 before from the other sources, right?

10:46:05 3 A. Correct.

10:46:06 4 MR. NOLAND: Laura, could you go to page 1161.

10:46:13 5 BY MR. NOLAND:

10:46:14 6 Q. This is that vehicle tow report we talked about a little
10:46:17 7 while ago, right?

10:46:18 8 A. Yes.

10:46:18 9 Q. And?

10:46:20 10 A. It looks like 1171.

10:46:22 11 Q. 1171. Sorry. I got the number wrong.

10:46:26 12 Again, this would be another number in this sequence
10:46:30 13 that had been signed for by Mr. Zinger on that date?

10:46:35 14 A. It does appear so, yes.

10:46:36 15 Q. Laura, if you could go to page Part 2, 1168. Now we
10:46:43 16 hadn't shown the jury this one before, but Ms. Lyon, is this
10:46:46 17 another one of the documents that you hadn't -- you didn't
10:46:50 18 have from the prior sources?

10:46:52 19 A. The prior sources, yes.

10:46:53 20 Q. Again, this has the 1178 handwritten number indicating
10:46:56 21 that it was on that receipt for discovery proving production
10:47:03 22 -- strike that.

10:47:03 23 This document, page 1178, would be within that range
10:47:08 24 of the documents that Mr. Zinger signed for on September the
10:47:14 25 2nd, 2005?

10:47:15 1 A. Right.

10:47:15 2 Q. Just one more.

10:47:51 3 So just to recap, Ms. Lyon, based on these two
10:47:54 4 receipts for discovery, they would show that Mr. Zinger had
10:47:56 5 received these documents that we have been talking about that
10:48:01 6 you didn't get from him or these other sources first in 2004,
10:48:08 7 correct?

10:48:08 8 A. It shows he signed a receipt for them, yes.

10:48:11 9 Q. And then he signed another receipt for them in 2005,
10:48:15 10 correct?

10:48:15 11 A. Correct.

10:48:20 12 MR. NOLAND: If I may have a moment, your Honor.

10:48:22 13 THE COURT: Sure.

10:48:33 14 MR. NOLAND: Thank you very much, Ms. Lyon.

10:48:37 15 THE COURT: Mr. Kulwin, do you have questions?

10:48:38 16 MR. KULWIN: No, your Honor.

10:48:39 17 THE COURT: Mr. Swaminathan. Redirect Examination.

10:48:45 18 BY MR. SWAMINATHAN:

10:48:46 19 Q. Ms. Lyon, a couple questions.

10:48:48 20 First, just to be clear, you got involved in this
10:48:50 21 case -- can you tell us approximately when you got involved in
10:48:53 22 the case?

10:48:53 23 A. It would have been sometime in 2011. I am not a hundred
10:48:57 24 percent sure. I believe probably February, but I am not a
10:48:59 25 hundred percent sure of the date.

10:49:00 1 Q. And so then you issued -- we talked about some of the
10:49:03 2 things you did including getting documents from criminal
10:49:05 3 defense attorneys, correct?
10:49:06 4 A. Correct.
10:49:06 5 Q. And in addition to that, you issued a subpoena to the
10:49:09 6 Chicago Police Department, correct?
10:49:10 7 A. I did after we filed in December, in December.
10:49:14 8 Q. And what did you basically ask the Chicago Police
10:49:15 9 Department for?
10:49:16 10 A. Any and all police reports, street files, you know, notes,
10:49:20 11 investigative reports, you know, basically please give me your
10:49:23 12 kitchen sink, whatever is in it.
10:49:25 13 Q. And in response to that, they gave you certain material,
10:49:28 14 correct?
10:49:28 15 A. They did.
10:49:29 16 Q. And was the dealer they gave you all material that you
10:49:32 17 already had in your file from the criminal defense attorneys?
10:49:34 18 A. It was.
10:49:35 19 Q. Did they give you this file, the basement file for
10:49:42 20 Mr. Fulton?
10:49:42 21 A. When I did the original subpoena, no.
10:49:44 22 Q. Later on, later on you learned that there was a basement
10:49:48 23 file for Mr. Fulton, correct?
10:49:49 24 A. I did.
10:49:50 25 Q. You learned that after it was revealed that there was one

10:49:52 1 for Mr. Fields that hadn't been tendered long ago, correct?

10:49:56 2 A. Correct.

10:49:56 3 Q. After you learned that, after you issued the subpoena to
10:49:59 4 the Chicago Police Department and gotten documents, then you
10:50:02 5 made a special request now that you knew about the basement
10:50:04 6 file for the basement file, correct?

10:50:07 7 A. Correct.

10:50:08 8 Q. Okay. And at that time you had a basement file produced
10:50:12 9 to you and you conducted a review is that right?

10:50:14 10 A. I did.

10:50:14 11 Q. And based on that review then you were able to determine
10:50:17 12 that these pages had not been produced to you, correct?

10:50:20 13 A. Correct.

10:50:20 14 Q. Okay. And that's the pages that Mr. Noland was asking you
10:50:23 15 about, correct?

10:50:24 16 A. Correct.

10:50:24 17 Q. Okay. Now, those page, are you confident that you did not
10:50:27 18 have those pages in your file?

10:50:28 19 A. Until I got the basement file, yes, I am confident about
10:50:32 20 that.

10:50:32 21 Q. Now, he asked you about a number of the documents in the
10:50:38 22 file and I'll just go through a couple. I am not going to go
10:50:45 23 through all of them.

10:50:47 24 MR. SWAMINATHAN: Judge, could you put the ELM0 back
10:50:49 25 on?

10:50:49 1 THE COURT: Sure.

10:50:53 2 BY MR. SWAMINATHAN:

10:50:55 3 Q. So, for example, he asked you about this document?

10:50:58 4 A. Right.

10:50:59 5 Q. You are confident that this is one of the documents that

10:51:03 6 was not given to you previously by the Chicago Police

10:51:05 7 Department in response to your subpoena around 2012?

10:51:07 8 A. Correct.

10:51:07 9 Q. Okay. Now, this document it's a reference to a case named

10:51:17 10 Lanza, is that of any relevance or is that notable to you at

10:51:20 11 all?

10:51:20 12 MR. NOLAND: Judge, objection.

10:51:23 13 THE COURT: Put the question again. Lanza. I was

10:51:27 14 trying to figure out where it was on the page. Can I see the

10:51:32 15 lawyers at sidebar, please.

10:51:43 16 THE COURT: You folks obviously know more than I do.

10:51:45 17 What's the issue or problem here?

10:51:47 18 MR. NOLAND: I think she acknowledged that document,

10:51:50 19 she wouldn't have expected to see that before. I believe that

10:51:54 20 involved a lawsuit that the plaintiff's law firm handled and

10:51:57 21 they obtained a judgment against bar tech and so that would be

10:52:02 22 unduly prejudicial. I think it's been gone over before. I

10:52:06 23 didn't get anything other than what the document is.

10:52:08 24 MR. SWAMINATHAN: He asked her is this document

10:52:12 25 important and my understanding, my understanding is she would

10:52:15 1 testify that this document is not important. It was actually
10:52:17 2 notable to her that there was a case going in 2010 because the
10:52:24 3 idea is just to say even which he is suggesting is unimportant
10:52:28 4 is important to her. So the basement file --

10:52:31 5 THE COURT: The lawsuit postdated the -- the lawsuit
10:52:34 6 postdated the prosecution of the criminal case, right?

10:52:37 7 MR. SWAMINATHAN: That is true.

10:52:38 8 THE COURT: I am going to exclude it under 403.

10:52:41 9 (The following proceedings were had in open court in the
10:52:46 10 presence and hearing of the jury:)

10:52:46 11 THE COURT: Okay. The objection is sustained. You
10:52:49 12 can proceed.

10:52:50 13 BY MR. SWAMINATHAN:

10:52:51 14 Q. This is another document that they showed you?

10:52:54 15 A. Correct.

10:52:54 16 Q. And you testified a little bit about this document
10:52:56 17 previously. Is this gentleman Mr. Fulton?

10:52:58 18 A. Yes.

10:52:58 19 Q. And you explained previously the relevance -- strike that.

10:53:02 20 You explained previously why this document was
10:53:05 21 notable to you?

10:53:06 22 MR. NOLAND: Objection, this is beyond the scope.

10:53:08 23 THE COURT: Hang on a second. I don't think I got
10:53:13 24 enough of a question yet to figure out whether it's beyond the
10:53:16 25 scope or not. Go ahead.

10:53:17 1 BY MR. SWAMINATHAN:

10:53:18 2 Q. Now, was this document produced to you in response to your
10:53:20 3 subpoena to the Chicago Police Department?

10:53:23 4 THE COURT: The objection is overruled.

10:53:24 5 THE WITNESS: It was not.

10:53:25 6 BY MR. SWAMINATHAN:

10:53:26 7 Q. Okay. And each of the other documents that were shown to
10:53:30 8 you by counsel, I am not going doing through all of them now,
10:53:33 9 were they produced to you in response to your subpoena to the
10:53:36 10 Chicago Police Department?

10:53:37 11 A. They were not.

10:53:38 12 Q. Okay. So when you asked the police department for a file,
10:53:41 13 those documents were not given to you?

10:53:43 14 A. Correct.

10:53:46 15 MR. NOLAND: Objection.

10:53:46 16 THE COURT: What?

10:53:48 17 MR. NOLAND: Objection, asked and answered.

10:53:49 18 THE COURT: Overruled.

10:53:51 19 BY MR. SWAMINATHAN:

10:53:56 20 Q. So your understanding in response to the subpoena that you
10:53:59 21 made to the Chicago Police Department before you ever learned
10:54:01 22 of there being a basement file, they went and produced some
10:54:05 23 material to you but they didn't go into the file and get this
10:54:08 24 file?

10:54:09 25 MR. NOLAND: Objection, your Honor.

10:54:11 1 THE COURT: Sustained.

10:54:11 2 THE COURT: Leave it for argument.

10:54:13 3 BY MR. SWAMINATHAN:

10:54:14 4 Q. Now, I want to turn back -- let me ask you about one more
10:54:22 5 document that you reviewed.

10:54:23 6 They showed you a few documents called GPRs.

10:54:27 7 A. Yes.

10:54:27 8 Q. Correct?

10:54:28 9 Now, counsel showed you a discovery receipt related
10:54:33 10 to 38 GPRs, right?

10:54:35 11 A. Correct.

10:54:35 12 Q. It just said 38 GPRs on it?

10:54:39 13 A. Correct.

10:54:39 14 Q. Do you have any idea whether or not this specific GPR was
10:54:42 15 in there?

10:54:42 16 A. I have no personal knowledge that it was.

10:54:44 17 Q. Was this one of the documents that you talked about -- we
10:54:50 18 talked about some documents yesterday that I didn't show you
10:54:53 19 and I said were there other documents that were useful to you?

10:54:55 20 A. Yes.

10:54:55 21 Q. Was this one of the documents that you were referring to?

10:54:58 22 A. Yes.

10:54:58 23 Q. And this was not given to you in response to your subpoena
10:55:02 24 to the Chicago Police Department?

10:55:02 25 A. It was not.

10:55:02 1 Q. And this is the last document I want to talk to you about.
10:55:09 2 We talked about a number of documents. Counsel showed you a
10:55:11 3 number of documents. He didn't show you this document,
10:55:14 4 correct?

10:55:15 5 MR. NOLAND: Objection. Beyond the scope.

10:55:18 6 THE COURT: Overruled.

10:55:21 7 THE WITNESS: He did not.

10:55:22 8 MR. SWAMINATHAN: Okay. Now, he didn't show you any
10:55:24 9 discovery receipt to suggest that this document had --

10:55:27 10 THE COURT: Let's just ask questions about whether --
10:55:29 11 not about whether or not somebody else did or didn't show
10:55:32 12 something.

10:55:33 13 BY MR. SWAMINATHAN:

10:55:33 14 Q. Was there any indication on the discovery receipt that you
10:55:36 15 were shown that this document was produced to the criminal
10:55:38 16 defense attorneys?

10:55:38 17 A. There was not.

10:55:39 18 Q. Is there any indication on this document that it has an
10:55:42 19 OCC number or a circled number in the bottom right corner?

10:55:46 20 A. There is not either number.

10:55:48 21 Q. You were asked some questions about the importance of
10:55:53 22 documents. Talked a little bit about this document yesterday.
10:56:04 23 Your testimony is --

10:56:05 24 MR. NOLAND: Objection, beyond the scope.

10:56:10 25 MR. SWAMINATHAN: This document --

10:56:11 1 THE COURT: Adds I said this, I am not a mind reader.
10:56:13 2 I can't figure out whether a question is proper or not after
10:56:19 3 hearing only 30 percent of it. Go ahead.
10:56:20 4 BY MR. SWAMINATHAN:
10:56:22 5 Q. This document leads you to believe that this may lead to a
10:56:26 6 potential perpetrator of the crime?
10:56:29 7 MR. NOLAND: Objection.
10:56:30 8 THE COURT: Overruled.
10:56:31 9 THE WITNESS: Correct.
10:56:34 10 BY MR. SWAMINATHAN:
10:56:35 11 Q. If you look at this document in isolation, isn't it
10:56:37 12 possible that someone could be mistaken to think that this is
10:56:41 13 not a particularly notable document?
10:56:42 14 MR. NOLAND: Objection, Judge.
10:56:43 15 THE COURT: Sustained.
10:56:44 16 BY MR. SWAMINATHAN:
10:56:45 17 Q. This document, would you agree, is basically some
10:56:48 18 scribbles of numbers and a few names?
10:56:52 19 MR. NOLAND: Objection, Judge.
10:56:55 20 THE COURT: While everybody is looking at it, they
10:56:58 21 can see what it is.
10:57:01 22 BY MR. SWAMINATHAN:
10:57:02 23 Q. Someone looking at this document in isolation, could they
10:57:04 24 reasonably look at it in isolation and say this doesn't seem
10:57:08 25 particularly notable?

10:57:09 1 MR. NOLAND: Objection.

10:57:10 2 THE WITNESS: I suppose they could.

10:57:11 3 THE COURT: The objection is overruled and the answer

10:57:13 4 can stand.

10:57:15 5 BY MR. SWAMINATHAN:

10:57:16 6 Q. Now, if based on what you know of someone who is handling

10:57:18 7 this file, that isn't actually true; is that correct?

10:57:22 8 A. That's correct.

10:57:23 9 MR. NOLAND: Objection.

10:57:24 10 THE COURT: What's the basis for the objection?

10:57:25 11 MR. NOLAND: Argumentative.

10:57:28 12 THE COURT: Overruled.

10:57:30 13 BY MR. SWAMINATHAN:

10:57:31 14 Q. This document proved to be useful to you, correct?

10:57:33 15 A. It is proving to be useful right now.

10:57:35 16 Q. And in your career, is it your experience that sometimes

10:57:40 17 small, little scribbles on a page have proven to be useful to

10:57:46 18 you in your cases?

10:57:46 19 A. They have turned the whole case sometimes.

10:57:48 20 MR. KULWIN: Calls for expert.

10:57:50 21 THE COURT: Overruled. I don't agree with that.

10:57:52 22 BY MR. SWAMINATHAN:

10:57:53 23 Q. Go ahead.

10:57:53 24 A. Sometimes a small detail like this will lead to something

10:57:58 25 really, really important in a case and how to exonerate

10:58:00 1 somebody, yes.

10:58:02 2 MR. SWAMINATHAN: Nothing further.

10:58:03 3 THE COURT: Mr. Noland.

10:58:08 4 - - -

10:58:08 5 ANDREA LYON, RECROSS-EXAMINATION

10:58:08 6 BY MR. NOLAND:

10:58:17 7 Q. Counsel showed you this page and said that -- talked about
10:58:22 8 the 38 GPRs. Do you remember that just a moment ago?

10:58:24 9 A. Yes.

10:58:24 10 Q. Now, this was one of the pages in the bottom right-hand
10:58:32 11 corner that had the handwritten page 1185 that it was
10:58:37 12 acknowledging receipt by the actual criminal defense attorney
10:58:41 13 at the time of the trial, right?

10:58:43 14 A. There is a signature on a receipt that says pages -- I
10:58:46 15 forgot, 1 to 1241.

10:58:49 16 Q. Yes.

10:58:52 17 A. So, yes, there is such a signature.

10:58:54 18 Q. Those receipts establish that all the documents that we
10:58:57 19 have been talking about except for that last one were signed
10:59:00 20 for by Mr. Zinger in 2004 and in 2005; is that right?

10:59:05 21 A. It shows that he signed the receipt. I have no way of
10:59:08 22 knowing if he sat there and went through and made sure that
10:59:11 23 there were actually 38 pages. I have no way of knowing that.
10:59:14 24 I do know that he signed the receipt. That I do know.

10:59:16 25 Q. And the purpose of the discovery receipt is to have a

10:59:19 1 record that the state had tendered information to the criminal
10:59:23 2 defense attorney in advance of the criminal trial; is that
10:59:23 3 right?

10:59:26 4 A. That's right, and a careful lawyer would --

10:59:29 5 THE COURT: The answer is that's right. The rest of
10:59:31 6 it is stricken.

10:59:31 7 MR. NOLAND: Thank you.

10:59:33 8 - - -

10:59:33 9 ANDREA LYON, REDIRECT EXAMINATION

10:59:37 10 BY MR. NOLAND:

10:59:37 11 Q. Was that document produced to you in response to your
10:59:42 12 request from the police department?

10:59:43 13 A. No.

10:59:51 14 MR. NOLAND: Objection.

10:59:52 15 THE COURT: Overruled. Any questions.

11:00:11 16 (The following proceedings were had at sidebar outside the
11:00:15 17 hearing of the jury:)

11:00:15 18 THE COURT: We had one from yesterday that -- you may
11:00:20 19 recall that there was an objection during or when going
11:00:25 20 through the background and I said shorten it up. One of the
11:00:28 21 jurors yesterday handed me. Provide a brief work history from
11:00:32 22 Andrea Lyon from 1979 until she became dean of Valparaiso, so
11:00:35 23 I am going to allow her to do that.

11:00:38 24 The other one is two questions. Can a juror ask a
11:00:39 25 witness their opinion? If not, then disregard. Second page,

11:00:43 1 what is your opinion on why the CPD did not give you the
11:00:46 2 basement file in response to your subpoena?

11:00:48 3 The answer is no, she can't give her opinion on that.
11:00:51 4 And so I am not going to ask that question. I am not going to
11:00:54 5 tell her why. I am just going to say don't speculate.

11:00:59 6 MR. KULWIN: Judge, with respect to her background, I
11:01:01 7 mean --

11:01:03 8 THE COURT: You have to be louder.

11:01:03 9 MR. KULWIN: With respect to her background, .

11:01:03 10 THE COURT: I am going to ask her her work history.
11:01:05 11 I didn't say background, work history, which has been done
11:01:09 12 with every other witness. Okay?

11:01:17 13 (The following proceedings were had in open court in the
11:01:17 14 presence and hearing of the jury:)

11:01:17 15 THE COURT: One of these was from yesterday. I think
11:01:21 16 when you were being questioned about your work history, you
11:01:24 17 got cut off someplace. What jobs did you hold from 79 until
11:01:27 18 you became dean of the law school in Valparaiso?

11:01:31 19 THE WITNESS: I was in the public defender office in
11:01:34 20 1990, then I ran an agency called the capital resource center.

11:01:38 21 THE COURT: From when?

11:01:41 22 THE WITNESS: 1990 to 1995. Then I joined the
11:01:43 23 University of Michigan faculty from 1995 to 2000.

11:01:46 24 THE COURT: The law school or undergrad?

11:01:49 25 THE WITNESS: The law school. Then I turned to

11:01:51 1 Chicago and joined the DePaul University law school faculty
11:01:54 2 there and worked there, became the dean of the clinical
11:01:57 3 programs there in 2006 I think that's right, no, 2008, I'm
11:02:05 4 sorry.

11:02:05 5 THE COURT: There until Valparaiso.

11:02:08 6 THE WITNESS: Then I went to Valparaiso in 2014.

11:02:12 7 THE COURT: There is one other question I am not
11:02:14 8 going to ask. I just remind the jury don't speculate on what
11:02:18 9 the answers might have been. We are going to take a short
11:02:26 10 break. I will take the jury out and come back right. (The
11:02:56 11 jury leaves the courtroom.)

11:02:56 12 THE COURT: So the marshals are going to bring
11:03:03 13 Mr. Kees down once the jury is in the jury room. Let me just
11:03:06 14 make sure that's happening. I am hoping that the fact that
11:03:25 15 people are hovering by the podium does not mean you want to
11:03:30 16 raise more issues with me.

11:03:31 17 MR. KULWIN: I don't.

11:03:32 18 THE COURT: People being Mr. Loevy.

11:03:33 19 MR. LOEVY: I have a motion to reconsider a motion
11:03:36 20 that I not be allowed to raise an issue.

11:03:38 21 THE COURT: What's the issue?

11:03:39 22 MR. LOEVY: He just got a deal to testify in the case
11:03:43 23 by the U.S. Attorney's Office. He has been prepped by Bill
11:03:47 24 Hogan to testify in this case.

11:03:48 25 THE COURT: How do you know that.

11:03:49 1 MR. LOEVY: His attorney told.

11:03:51 2 THE COURT: How do you know he was prepped by

11:03:53 3 Mr. Hogan?

11:03:53 4 MR. LOEVY: I don't know. I withdraw it. But he has

11:03:55 5 not -- before the last trial --

11:03:57 6 THE COURT: What is the ruling that you want me to

11:03:59 7 reconsider?

11:03:59 8 MR. LOEVY: To not advise him not to volunteer the

11:04:04 9 Tredeste Murray incident, what he heard about the murder and

11:04:07 10 anything about Mr. Fields' criminal background.

11:04:09 11 THE COURT: Hang on just one second.

11:04:12 12 MR. LOEVY: Before the last trial, he was warned by

11:04:14 13 attorneys explained in the motion in limine in 2014. This

11:04:18 14 time it's been years that anybody's explained the motions.

11:04:21 15 THE COURT: I follow what you're saying.

11:04:23 16 MR. LOEVY: Nobody has told him.

11:04:24 17 MR. KULWIN: I don't care.

11:04:25 18 THE COURT: I assume nobody has a problem with that.

11:04:27 19 MR. NOLAND: The criminal background, Mr. Kees has

11:04:30 20 testified in 2014 that at some point after Mr. Fields was

11:04:37 21 released from prison.

11:04:37 22 THE COURT: So what I would say to him is that

11:04:40 23 there's not going to be any questions to him about the

11:04:44 24 Tredeste Murray incident, there's not going to be any

11:04:46 25 questions to him about Mr. Fields' prior convictions other

11:04:50 1 than the Smith/Hickman murder, and there's not going to be any
11:04:53 2 questions to him about what was the third thing?

11:04:56 3 MR. LOEVY: What he heard about the murder from other
11:04:58 4 people.

11:04:58 5 THE COURT: What he heard about the murder from
11:05:00 6 people other than Mr. Fields.

11:05:02 7 MR. KULWIN: No, Judge, no, you let that precise
11:05:05 8 testimony in the last trial. There was -- no.

11:05:12 9 THE COURT: Page. I am -- I said at page 15 of my
11:05:16 10 ruling on certain motions in limine, document number 629 Kees
11:05:23 11 may not testify regarding what he heard the next day about who
11:05:26 12 had committed the murders or why certain persons including
11:05:29 13 Fields were chosen for the assignment. That testimony is
11:05:31 14 hearsay and possibly second or third hand hearsay not subject
11:05:35 15 to any exception established by defendants.

11:05:38 16 MR. KULWIN: Judge, here is the exact testimony that
11:05:40 17 was let in. Do you want me to read it to you?

11:05:44 18 THE COURT: No, I want to look at it. This is page
11:05:47 19 2449. It looks like at page 2449, he was asked about
11:06:18 20 conversation at the Al Hambre on April 29th with Charles
11:06:25 21 Green, Earl Hawkins, no Mr. Fields was there.

11:06:27 22 MR. KULWIN: Right.

11:06:28 23 MR. LOEVY: The confession is okay.

11:06:32 24 MR. KULWIN: It's to put the rest of the statements
11:06:33 25 in context. As long as I can bring that conversation up.

11:06:36 1 Fields is there.

11:06:37 2 THE COURT: You can bring this conversation up.

11:06:39 3 MR. KULWIN: Thanks.

11:06:40 4 THE COURT: I am going to leave that alone. I am

11:06:42 5 just going to talk to him about Tredeste Murray and prior

11:06:45 6 criminal history. That's it. Okay? No more issues before he

11:06:49 7 starts.

11:06:49 8 MR. KULWIN: Thank you, Judge.

11:06:51 9 THE COURT: Everybody stay here while I admonish him.

11:07:28 10 Mr. Kees, the jury is taking a break. We will be

11:07:30 11 back in 10 minutes, I'll swear you in, you'll start your

11:07:34 12 testimony. There's two things I want to tell you. Based on

11:07:36 13 some rulings I have made, there's not going to be any

11:07:38 14 questions to you about Mr. Fields' prior criminal history

11:07:42 15 other than his conviction on the Smith/Hickman murders.

11:07:45 16 That's number one. And number two, there's not going to be

11:07:47 17 any questions to you about an incident involving a person by

11:07:51 18 the name of Tredeste Murray. Do you know what I'm talking

11:07:53 19 about?

11:07:54 20 THE WITNESS: Yeah.

11:07:54 21 THE COURT: There's not going to be any questions to

11:07:57 22 you about that. I have ruled that that evidence is not

11:07:59 23 admissible. You are noting to go into those two things. He

11:08:06 24 is nodding his head yes.

11:08:09 25 Everybody take a short break and then we will go

11:08:11 1 ahead.

11:08:12 2 (Short break.)

11:14:24 3 MS. GORMAN:

11:15:18 4 (The jury enters the courtroom.)

11:15:19 5 THE COURT: Everybody can have a seat except the

11:15:21 6 witness.

11:15:21 7 (Witness sworn.)

11:15:31 8 THE COURT: Mr. Loevy, you can go ahead.

11:15:31 9 - - -

11:15:31 10 DERRICK KEES, DIRECT EXAMINATION

11:15:31 11 BY MR. LOEVY:

11:15:37 12 Q. If you could state your name for the record.

11:15:38 13 A. Derrick Kees.

11:15:39 14 Q. You are presently in prison?

11:15:41 15 A. That's correct.

11:15:42 16 Q. A former member of the El Rukn organization?

11:15:43 17 A. That's correct.

11:15:44 18 Q. And when did you stop being a member of the El Rukn

11:15:47 19 organization?

11:15:47 20 A. In about '86.

11:15:48 21 Q. All right. Back in the '70s and '80s, your role in the

11:15:59 22 organization was an enforcer, correct?

11:15:59 23 A. That's correct.

11:16:00 24 Q. You were a hit man essentially, right?

11:16:01 25 A. I was not a hit man.

11:16:02 1 Q. You did assassinate people?

11:16:04 2 A. I killed people.

11:16:05 3 Q. All right. How many people did you kill?

11:16:06 4 A. I wasn't keeping count.

11:16:11 5 Q. You weren't keeping count you said?

11:16:13 6 A. Right.

11:16:13 7 Q. Can you give us a ballpark?

11:16:15 8 A. No.

11:16:15 9 Q. More than 10?

11:16:16 10 A. Whatever number you have.

11:16:21 11 Q. I'm asking you. More than 10, less than ten?

11:16:24 12 A. Whatever number you have.

11:16:25 13 Q. How many did you plead guilty to, sir?

11:16:27 14 A. About four or five.

11:16:47 15 Q. Six sound right?

11:16:48 16 A. You may be right.

11:16:52 17 Q. All right. Sir, you got a sentence in exchange for those

11:16:57 18 murders, right? How many years were you sentenced to?

11:17:00 19 A. 99.

11:17:01 20 Q. Isn't it true, sir, that you were approached about

11:17:05 21 testifying in this trial in exchange -- in this trial in

11:17:09 22 exchange for a reduction in sentence?

11:17:13 23 A. Come again?

11:17:15 24 Q. Isn't it true, sir, that prior to this trial before Judge

11:17:19 25 Kennelly, you were approached about the possibility of you

11:17:22 1 testifying for the defense and you would get a break on your
11:17:25 2 sentence, correct?
11:17:26 3 A. That's correct.
11:17:29 4 Q. When was the deal struck?
11:17:31 5 A. A couple of weeks ago.
11:17:39 6 Q. Was it struck before the trial started?
11:17:41 7 A. I don't know when the trial started.
11:17:45 8 Q. The trial started November the 14th, two weeks ago
11:17:50 9 Monday,. Was a deal made with you to cut your time in
11:17:54 10 exchange for your testimony at this civil trial before we
11:17:57 11 started?
11:17:57 12 A. Yeah I asked for a deal, I asked for a Rule 35.
11:18:03 13 Q. In fact, the motion to cut your time was granted on
11:18:06 14 Monday, wasn't it?
11:18:06 15 A. Yeah.
11:18:07 16 Q. And that cut in time, when are you going to get out of
11:18:11 17 prison, sir?
11:18:12 18 A. About November 21.
11:18:16 19 Q. Of?
11:18:17 20 THE COURT: November of the year 2021?
11:18:20 21 THE WITNESS: 2021.
11:18:26 22 BY MR. LOEVY:
11:18:26 23 Q. That's not 99 years?
11:18:28 24 A. No.
11:18:28 25 Q. They cut 12 years off your sentence in he can change for

11:18:31 1 your testimony in this case, correct?

11:18:33 2 A. Yeah.

11:18:34 3 Q. Isn't it true, sir, the deal wasn't struck until last
11:18:40 4 Thursday, the day O'Callaghan testified?

11:18:43 5 MR. KULWIN: Judge, I am going to object.

11:18:45 6 THE COURT: Sustained.

11:18:45 7 BY MR. LOEVY:

11:18:45 8 Q. Isn't it true the deal was not struck until last Thursday?

11:18:48 9 A. I thought we had a deal a couple of weeks ago.

11:18:55 10 Q. Why did you have that understanding?

11:18:57 11 A. I suppose --

11:19:01 12 THE COURT: Can I just see the lawyers at sidebar for
11:19:03 13 a second.

11:19:06 14 (The following proceedings were had at sidebar outside the
11:19:09 15 hearing of the jury:)

11:19:09 16 THE COURT: This seems to me to be an appropriate
11:19:13 17 point for me to tell you, Mr. Loevy, that you cannot do your
11:19:17 18 normal thing on this witness. You got to be extremely careful
11:19:21 19 when you start something somebody like this an open-ended
11:19:25 20 question. I'm warning you.

11:19:27 21 MR. LOEVY: May I speak?

11:19:29 22 THE COURT: Do you understand my warning?

11:19:31 23 MR. LOEVY: Yes.

11:19:31 24 THE COURT: Then go ahead.

11:19:32 25 MR. LOEVY: A hundred percent I understand. What I'm

11:19:34 1 saying is it was told to us that the deal was struck by his
11:19:38 2 attorney, and so he's now saying it was struck before trial.

11:19:42 3 THE COURT: But you got his answer. You got his
11:19:45 4 answer.

11:19:45 5 MR. LOEVY: I want to probe it. There was a deal
11:19:48 6 struck before trial and nobody told us. That's a big deal. I
11:19:52 7 agree with you I'm asking a question that I have no idea what
11:19:55 8 the answer is but this is a big deal. There was a deal struck
11:19:59 9 before trial and nobody told us.

11:20:00 10 THE COURT: When did the motion get filed?

11:20:02 11 MR. LOEVY: The motion got filed Thursday.

11:20:04 12 THE COURT: Those motions don't appear out of thin
11:20:08 13 air. It's five or six pages. Any reasonable lawyer looking
11:20:13 14 at that motion would understand that that thing didn't appear
11:20:16 15 suddenly on that day and there was some prior discussion I'm
11:20:22 16 warning you. I'm warning you.

11:20:24 17 MR. KULWIN: He has an attorney-client privilege and
11:20:26 18 if he heard all of this from his attorney --

11:20:29 19 THE COURT: I don't necessarily agree with that. Let
11:20:32 20 me explain why. So it was contemplated that the deal was
11:20:36 21 going to be presented to a judge, so when he learned it
11:20:38 22 happened, whether he learned it from a lawyer or somebody else
11:20:42 23 I don't think it's a privileged. I'm just saying I think
11:20:46 24 you're really skating on thin ice here. I'm just telling you.

11:20:49 25 MR. LOEVY: You're right.

11:20:50 1 THE COURT: I am not going to micro manage your
11:20:53 2 questions, but I'm telling you that you're skating on thin ice
11:20:58 3 when you start asking this guy open ended questions like that.

11:21:01 4 MR. LOEVY: That's the point.

11:21:02 5 THE COURT: You've got his answer. You may not like
11:21:05 6 his answer, but it's not -- you are not going to get anything
11:21:08 7 different out of him.

11:21:09 8 MR. LOEVY: Understood.

11:21:10 9 THE COURT: That's all I'm going to say.

11:21:14 10 (The following proceedings were had in open court in the
11:21:14 11 presence and hearing of the jury:)

11:21:14 12 THE COURT: All right. You can proceed.

11:21:16 13 BY MR. LOEVY:

11:21:17 14 Q. They did cut 12 years off your sentence, correct?

11:21:20 15 A. Yeah.

11:21:21 16 Q. And you have an understanding that that 12-year cut is in
11:21:26 17 exchange for testimony that you're going to give in this
11:21:30 18 courtroom?

11:21:31 19 A. From my perspective, it's for what I've already done.

11:21:41 20 Q. For the murders you've done?

11:21:43 21 A. No, testimony.

11:21:45 22 Q. All right. Let's talk -- let's back up. In the late '80s
11:21:49 23 after you committed some of these murders, you got caught by
11:21:51 24 the police, right?

11:21:52 25 A. Caught, no, I didn't get caught.

11:21:56 1 Q. When did you get caught?

11:22:00 2 THE COURT: Why don't you just use the word arrested.

11:22:02 3 BY MR. LOEVY:

11:22:03 4 Q. When did you get arrested, sir?

11:22:07 5 A. I was arrested in '88, 87.

11:22:08 6 Q. All right. At that point, you knew you were in serious

11:22:11 7 legal trouble, correct?

11:22:12 8 A. I knew I had some problems.

11:22:16 9 Q. You were looking at life in prison?

11:22:18 10 A. Exactly what case are you talking about being arrested on?

11:22:26 11 Q. You told me you committed more murders than you can

11:22:28 12 remember, right?

11:22:30 13 A. I didn't say that.

11:22:33 14 Q. All right. When you got arrested, you knew you had a very

11:22:36 15 real possibility of spending the rest of your life in prison,

11:22:41 16 correct?

11:22:41 17 A. I knew I had some legal problems, how about that.

11:22:43 18 Q. All right. We can agree on that.

11:22:45 19 You also knew that they were talking about the death

11:22:47 20 penalty, correct?

11:22:47 21 A. No.

11:22:52 22 Q. This is your testimony -- do you remember giving this

11:22:54 23 statement on November the 17th, 1994, in the matter of U.S. v.

11:22:59 24 Kees at page 167.

11:23:02 25 "QUESTION: Well, weren't you aware, sir, that the

11:23:04 1 assistant state's attorneys initially wanted the death penalty
11:23:08 2 for you?

11:23:08 3 "ANSWER: Yeah, I was made aware of that."

11:23:11 4 Did you give that testimony, sir?

11:23:17 5 The first question is did you give that testimony?

11:23:20 6 A. I don't want you to minutes my words at all.

11:23:24 7 MR. LOEVY: Your Honor.

11:23:25 8 THE COURT: The question is did you give the
11:23:27 9 testimony that he just quoted to you there?

11:23:31 10 THE WITNESS: He is talking about something in '94.

11:23:33 11 THE COURT: I understand. He is asking whether you
11:23:35 12 gave that testimony -- the question is whether you gave that
11:23:38 13 testimony in 1994, that is the question. That's the question
11:23:41 14 I want you to answer.

11:23:42 15 THE WITNESS: If that's what he has before him, then,
11:23:45 16 yes, I testified to that.

11:23:46 17 BY MR. LOEVY:

11:23:47 18 Q. When you got arrested, they took you to Joliet?

11:23:49 19 A. Come again?

11:23:51 20 Q. Where did they put you after they arrested you?

11:23:53 21 A. At the county jail.

11:23:57 22 Q. At some point, were you transferred to Joliet?

11:24:01 23 A. Yeah.

11:24:01 24 Q. What facility over there?

11:24:02 25 A. In Joliet.

11:24:04 1 Q. Okay. What's it called?

11:24:06 2 A. It's prison.

11:24:07 3 Q. What's that?

11:24:07 4 A. Illinois state prison.

11:24:09 5 Q. All right. Were you under a sentence when you got to

11:24:12 6 Joliet?

11:24:13 7 A. Yeah.

11:24:13 8 Q. What sentence was that?

11:24:14 9 A. 5 five years.

11:24:15 10 Q. On the State charges?

11:24:17 11 A. Yeah.

11:24:17 12 Q. And at that point, sometime around March 1989, you got an

11:24:22 13 unexpected visit from Detective O'Callaghan, correct?

11:24:24 14 A. Yeah.

11:24:25 15 Q. And Sergeant Murphy as well, right?

11:24:28 16 A. You got him with him.

11:24:36 17 Q. You spoke to O'Callaghan and Murphy for about three hours,

11:24:39 18 right?

11:24:39 19 A. I mean, I wasn't looking at the clock, but, yeah, we

11:24:42 20 talked for a while.

11:24:44 21 Q. And they wanted you to help them make their cases, right?

11:24:47 22 A. Yeah, yes, they did.

11:24:48 23 Q. And you asked them what's in it for me, right?

11:24:50 24 A. Absolutely.

11:24:51 25 Q. And what did they tell you?

11:24:53 1 A. They talked to the U.S. Attorney's Office.

11:24:59 2 Q. And you would get a deal?

11:25:01 3 A. That was my idea of it.

11:25:04 4 Q. Because all things being equal, you didn't want to testify
11:25:08 5 against other people, right?

11:25:09 6 A. I had no reason to.

11:25:14 7 Q. Right. So you decided to save yourself to do that, right?

11:25:17 8 A. Absolutely.

11:25:19 9 Q. That's what I'm asking.

11:25:21 10 So in 1989, you reached an agreement that you would
11:25:26 11 point your finger at others in exchange for less time for
11:25:29 12 yourself, right?

11:25:30 13 A. Come again?

11:25:32 14 Q. When they were asking you to cooperate, they were asking
11:25:36 15 you to cooperate about a lot of cases, correct?

11:25:38 16 A. Yeah.

11:25:40 17 Q. A lot of cases against a lot of people, right?

11:25:42 18 A. Yeah.

11:25:42 19 Q. And you understood that if they were going to give you a
11:25:45 20 deal, you were going to have to give them something very
11:25:47 21 useful and be very helpful, correct?

11:25:49 22 A. Absolutely.

11:25:50 23 Q. All right. And your plea agreement that you signed
11:25:55 24 required you to testify about all the various cases, correct,
11:25:59 25 that you talked about?

11:26:01 1 A. Yeah.

11:26:02 2 Q. Now, at some point after you agreed with Mr. O'Callaghan
11:26:09 3 and Mr. Murphy to be a cooperator, they transferred you to
11:26:14 4 Chicago, correct?

11:26:15 5 A. Yeah.

11:26:17 6 Q. And O'Callaghan did most of the interviewing during this
11:26:20 7 time period, correct?

11:26:21 8 A. He did the initial interviewing.

11:26:25 9 Q. He did most of the interviewing, didn't he?

11:26:27 10 A. I said he did the initial interviewing.

11:26:30 11 Q. All right. Was he doing most of the interviewing during
11:26:35 12 the initial interview?

11:26:37 13 A. Yeah.

11:26:39 14 Q. Who was doing most of the talking?

11:26:41 15 A. Okay. Yeah, okay.

11:26:44 16 Q. You were asked about certain incidents before you brought
11:26:48 17 those incidents up; is that fair?

11:26:59 18 A.

11:26:59 19 MR. NOLAND: Objection.

11:27:00 20 THE COURT: He said he can't remember.

11:27:02 21 THE WITNESS: I don't remember the order of how he
11:27:04 22 asked all the questions, but.

11:27:06 23 BY MR. LOEVY:

11:27:06 24 Q. Isn't it true he was bringing up certain murders before
11:27:09 25 you were bringing up certain murders and asking if you knew

11:27:12 1 about that?

11:27:12 2 MR. NOLAND: Judge, objection.

11:27:13 3 THE COURT: The objection is sustained.

11:27:16 4 BY MR. LOEVY:

11:27:16 5 Q. Isn't it true that O'Callaghan brought out a box of files
11:27:19 6 and he was asking you do you know anything about this, do you
11:27:22 7 know anything about that one?

11:27:23 8 MR. NOLAND: Objection, Judge, if I could be heard.

11:27:25 9 THE COURT: Okay.

11:27:28 10 (The following proceedings were had at sidebar outside the
11:27:41 11 hearing of the jury:)

11:27:41 12 MR. NOLAND: I apologize for having to ask for the
11:27:43 13 sidebar. I'm worried about the Ronnie bell incident.

11:27:47 14 THE COURT: Remind me.

11:27:48 15 MR. NOLAND: The Houston. That O'Callaghan and
11:27:50 16 Murphy went down there to talk to him and they specifically
11:27:53 17 were going down there to exonerate those two guys. That was
11:27:58 18 the case they initially were talking to him about. I think
11:28:01 19 the record would support that they did bring up that case and
11:28:03 20 he did provide the consistent information which was
11:28:06 21 exonerating those two El Rukns in prison, saying that other
11:28:10 22 guys did it, that's my concern and I'm concerned that it would
11:28:12 23 open the door to what he might say and that something would
11:28:15 24 have to come in after.

11:28:17 25 MR. LOEVY: Our theory of the case is not that they

11:28:19 1 said tell us about your murders and he said, oh,
11:28:23 2 Smith/Hickman, that they suggested cases to him and as you'll
11:28:25 3 see he puts himself in them. It is relevant that he didn't
11:28:28 4 bring up Smith/Hickman. What's relevant is the question I
11:28:31 5 asked had nothing to do about Bell. It's true he pulled out a
11:28:34 6 box of files and started asking you about different cases. I
11:28:37 7 am not going to ask specifics, so I can take care of that
11:28:37 8 concern. I am just going to say, isn't it true they were
11:28:42 9 pulling out files, asking you about different cases and
11:28:43 10 whether you knew anything.

11:28:44 11 THE COURT: Okay.

11:28:44 12 MR. LOEVY: That's the question.

11:28:46 13 THE COURT: I don't see that as opening the door if
11:28:48 14 that's what you're going to do.

11:28:50 15 MR. KULWIN: I will say if all he says is they pulled
11:28:53 16 out a box, they asked you about this case, fine, I'm going to
11:28:57 17 say, they asked you about a murder. On my examination, I'll
11:29:01 18 say, okay, well, your Honor asked some questions about the box
11:29:04 19 and they pulled out a file, they asked you did you know
11:29:08 20 anything about this?

11:29:09 21 MR. LOEVY: That's what I am going to ask.

11:29:11 22 THE COURT: That's what he is going to ask.

11:29:16 23 MR. KULWIN: Okay.

11:29:16 24 (The following proceedings were had in open court in the
11:29:17 25 presence and hearing of the jury:)

11:29:17 1 THE COURT: Okay. You can proceed, Mr. Loevy.

11:29:20 2 BY MR. LOEVY:

11:29:20 3 Q. Did the question get asked?

11:29:25 4 THE COURT: Yeah, the question was did Mr.

11:29:28 5 O'Callaghan bring out a box of files and he was showing them

11:29:30 6 to you and asking you if you knew anything about particular

11:29:33 7 files. Do you want to rephrase it or is that good enough?

11:29:35 8 BY MR. LOEVY:

11:29:36 9 Q. Isn't it true what happened was he brought out this box

11:29:39 10 that had files in it, he was asking you do you know anything

11:29:42 11 about this one, do you know anything about that one?

11:29:44 12 A. Yeah.

11:29:45 13 Q. And some of them you knew about?

11:29:46 14 A. You are right.

11:29:47 15 Q. And some of them you didn't, right?

11:29:49 16 A. Right.

11:29:49 17 Q. And this time period is March '89, correct?

11:29:52 18 A. I thought it might have been like -- yeah, yeah, about

11:30:07 19 March '89, somewhere around there, yeah.

11:30:09 20 Q. All right. Once you became a cooperating witness, two of

11:30:14 21 the people they wanted you to cooperate against were Earl

11:30:17 22 Hawkins and Nate Fields, correct?

11:30:19 23 A. Yeah.

11:30:21 24 Q. And in fact, at various proceedings you did give testimony

11:30:24 25 involving Hawkins, correct?

11:30:25 1 A. Yep.

11:30:26 2 Q. And he testified against you, didn't he?

11:30:28 3 A. Yes, he did.

11:30:28 4 Q. So you had no problem pointing your finger at Earl

11:30:31 5 Hawkins, did you?

11:30:31 6 A. If you are talking about a tit for tat, you know, that's

11:30:40 7 not our issue.

11:30:41 8 Q. Fair enough.

11:30:42 9 How many times did you meet with Mr. O'Callaghan

11:30:45 10 between March 89 and May of '89?

11:30:49 11 A. Between March and May?

11:30:53 12 Q. Yeah, first few months you were cooperating.

11:30:56 13 A. At the initial one, end of May, a couple of times. Three,

11:31:09 14 four times, I guess.

11:31:10 15 Q. Three or four times. Were you talking about various

11:31:13 16 different cases?

11:31:14 17 A. Yeah.

11:31:14 18 Q. You were telling them what you knew or didn't know?

11:31:16 19 A. Yeah.

11:31:16 20 Q. Now, the first time you ever talked about Smith/Hickman,

11:31:19 21 the murder that we are here to talk about today was May 4th,

11:31:22 22 1989, correct?

11:31:24 23 A. If you have that, you know, document, then, yeah.

11:31:28 24 Q. I am going to --

11:31:29 25 MR. LOEVY: May I approach, your Honor?

11:31:30 1 THE COURT: Sure.

11:31:31 2 BY MR. LOEVY:

11:31:31 3 Q. Showing you some notes dated May 4, does that refresh your
11:31:37 4 recollection?

11:31:37 5 MR. KULWIN: Could we have an exhibit number?

11:31:40 6 THE WITNESS: It says May 4th, 89.

11:31:43 7 MR. LOEVY: The exhibit number at the bottom.

11:31:44 8 THE WITNESS: 172.

11:31:46 9 MR. LOEVY: 172.

11:31:48 10 MR. KULWIN: Thank you.

11:31:48 11 BY MR. LOEVY:

11:31:49 12 Q. Does that refresh your recollection that the first time
11:31:50 13 Smith/Hickman came up was May 4th?

11:31:52 14 A. Yeah, that refreshed my memory.

11:31:56 15 Q. And on May 4th, that's when they brought you a document to
11:32:00 16 sign, correct?

11:32:01 17 A. You got that document.

11:32:08 18 Q. First I'm asking your memory?

11:32:10 19 A. Do you have a document? I don't know the date.

11:32:12 20 Q. What was the document they asked you to sign, sir?

11:32:16 21 MR. NOLAND: Objection, foundation.

11:32:18 22 THE COURT: Overruled. I think he's basically saying
11:32:22 23 he doesn't remember dates. That's what he just said a second
11:32:24 24 ago.

11:32:25 25 BY MR. LOEVY:

11:32:25 1 Q. Did you sign a cooperation agreement?

11:32:26 2 A. In May 89?

11:32:34 3 Q. Yes.

11:32:35 4 A. I can't quite remember.

11:32:40 5 Q. All right. Do you remember giving this statement on

11:32:42 6 November the 16th, 1994, at page 77 in U.S. v. Kees.

11:32:48 7 "QUESTION:

11:32:48 8 MR. KULWIN: Hold on a second, Judge. I have to find
11:32:50 9 that transcript.

11:32:54 10 THE COURT: What's the date and page, Mr. Loevy,
11:32:56 11 again?

11:32:56 12 MR. LOEVY: The date is November the 16th, 1994,
11:32:59 13 United States v. Kees, page 77.

11:33:01 14 THE COURT: Okay. Go ahead.

11:33:01 15 BY MR. LOEVY:

11:33:03 16 Q. "QUESTION: Did you discuss at that time what you would
11:33:05 17 be receiving for the information you were giving?

11:33:07 18 "ANSWER: At that time, no, not at that time. Let me
11:33:11 19 ask you, Derrick, I will market it as Defendant's Exhibit 2,
11:33:14 20 whether or not you recognize this document?

11:33:15 21 "ANSWER: Yes.

11:33:16 22 "QUESTION: Is that your signature in the lower
11:33:18 23 right-hand corner?

11:33:19 24 "ANSWER: Yes, it is.

11:33:20 25 "QUESTION: What is the date on there?

11:33:22 1 "ANSWER: 5/4/89.

11:33:25 2 "QUESTION: Was this the date that Murphy and

11:33:27 3 O'Callaghan were visiting you in jail?

11:33:30 4 "ANSWER: Yes

11:33:31 5 "QUESTION: What is the document that your signature

11:33:33 6 appears on the lower right-hand corner on?

11:33:36 7 "ANSWER: That's a waiver.

11:33:37 8 "QUESTION: Did you sign this document?

11:33:39 9 "ANSWER: Yes, I did."

11:33:41 10 Did you give that statement

11:33:42 11 MR. KULWIN: It's not a cooperating agreement. It's

11:33:45 12 a waiver.

11:33:45 13 THE COURT: Sustained.

11:33:46 14 BY MR. LOEVY:

11:33:47 15 Q. What was it you signed with them on May 4th, 1989?

11:33:50 16 A. Obviously just the document that you have in front of you.

11:33:54 17 Q. What is a waiver? Either you don't remember it sounds

11:33:57 18 like what it was?

11:33:58 19 MR. KULWIN: Objection, Judge, multiple questions.

11:34:00 20 THE COURT: Sustained.

11:34:01 21 BY MR. LOEVY:

11:34:02 22 Q. All right. You did come to cooperate on the Smith/Hickman

11:34:05 23 case, correct?

11:34:14 24 A. I cooperated in federal court.

11:34:15 25 Q. On a number of different scenarios, correct?

11:34:18 1 A. Right.

11:34:19 2 Q. And once you decided to become a cooperator, they isn't
11:34:22 3 you over to the MCC, correct?

11:34:23 4 A. Say it again.

11:34:26 5 Q. There is a federal prison down the street from this
11:34:28 6 building, the MCC?

11:34:30 7 A. Yeah.

11:34:30 8 Q. That's where you got September, right?

11:34:32 9 A. That's where I was housed for quite some time.

11:34:35 10 Q. A couple years, right? You were on the sixth floor?

11:34:38 11 A. Yeah.

11:34:39 12 Q. With you, Earl Hawkins, he was there too, right?

11:34:44 13 MR. NOLAND: Judge, could we have a foundation, time
11:34:46 14 frame?

11:34:47 15 THE COURT: Set the time frame as best you can.

11:34:53 16 BY MR. LOEVY:

11:34:53 17 Q. This is 87 to about 89, would you agree, sir?

11:34:57 18 MR. KULWIN: Judge, I am going to object on that time
11:34:59 19 frame. He has to be more specific given the housing.

11:35:02 20 BY MR. LOEVY:

11:35:02 21 Q. You tell us, sir?

11:35:03 22 THE COURT: Do you know what period of time you were
11:35:05 23 at the MCC?

11:35:06 24 THE WITNESS: I went into the MCC in '89.

11:35:08 25 BY MR. LOEVY:

11:35:09 1 Q. All right. How long did you stay there?

11:35:11 2 A. Well, I was there until about 90 and then I got

11:35:16 3 transferred.

11:35:16 4 Q. All right. But you started cooperating as far back as 86,

11:35:19 5 right?

11:35:19 6 A. No.

11:35:23 7 Q. On May 4th?

11:35:25 8 THE COURT: That would be 89.

11:35:27 9 MR. LOEVY: 89, got it.

11:35:29 10 THE COURT: That's what you elicited.

11:35:30 11 MR. LOEVY: I misunderstood.

11:35:32 12 BY MR. LOEVY:

11:35:33 13 Q. In '89 to 90, you are in the MCC with Earl Hawkins, early

11:35:40 14 Sumner and Jackie Clay?

11:35:41 15 A. Yeah.

11:35:42 16 Q. And you guys were all allowed to exchange information?

11:35:47 17 A. There was no exchange of information.

11:35:49 18 MR. NOLAND: Objection.

11:35:49 19 THE COURT: Overruled.

11:35:50 20 BY MR. LOEVY:

11:35:51 21 Q. You had the opportunity to exchange information with them,

11:35:53 22 right?

11:35:53 23 A. There was no exchange of information.

11:35:54 24 Q. For that -- I understand that you say you didn't exchange

11:35:57 25 information.

11:35:58 1 A. Let's be clear.

11:35:59 2 Q. What's that?

11:35:59 3 A. Let's be clear. There was no exchange of information.

11:36:02 4 Q. I'm asking you a different question.

11:36:04 5 There was an opportunity if you were so inclined to
11:36:08 6 exchange information with Earl, Jackie, and Eugene, the other
11:36:11 7 cooperators, correct?

11:36:12 8 A. That sounds like a theory to me.

11:36:15 9 THE COURT: Just answer the question, please.

11:36:17 10 THE WITNESS: There is no other answer for it.

11:36:19 11 BY MR. LOEVY:

11:36:19 12 Q. All right. You and the others, they also made deals to
11:36:22 13 cooperate with the government, correct?

11:36:24 14 A. I guess they did.

11:36:30 15 Q. You understood that at the time, right?

11:36:32 16 A. Yeah.

11:36:33 17 Q. All of you were trying to be as helpful as possible to the
11:36:36 18 government to save yourself, correct?

11:36:38 19 MR. KULWIN: I object as to what --

11:36:40 20 THE COURT: Sustained.

11:36:40 21 BY MR. LOEVY:

11:36:41 22 Q. All right. You eventually gave testimony to a grand jury,
11:36:43 23 correct?

11:36:43 24 A. Yeah.

11:36:45 25 Q. And you spent quite a bit of time preparing that

11:36:48 1 testimony, right?

11:36:49 2 A. Preparing for the grand jury, no.

11:36:54 3 Q. Well, didn't you create a statement that listed out all of

11:36:56 4 your information about all your crimes?

11:36:58 5 A. I didn't create a statement.

11:37:00 6 Q. Okay. Did you cooperate with a lawyer named Bill Hogan?

11:37:04 7 A. I went before a grand jury and they asked me questions and

11:37:07 8 I answered them.

11:37:07 9 Q. All right. But before you went to the grand jury and

11:37:11 10 asked questions and answered them, you spent quite a bit of

11:37:15 11 time getting ready, right?

11:37:16 12 A. No.

11:37:20 13 Q. They just said, hey, let's go to the grand jury, tell us

11:37:23 14 what you know?

11:37:24 15 MR. KULWIN: Objection, argumentative, Judge.

11:37:25 16 THE COURT: Overruled.

11:37:26 17 BY MR. LOEVY:

11:37:26 18 Q. That's your testimony?

11:37:27 19 A. That is my testimony.

11:37:28 20 Q. All right. In the time when you were at the MCC for that

11:37:32 21 year or so, were you interacting with Bill Hogan, the U.S.

11:37:35 22 attorney?

11:37:36 23 A. Yes.

11:37:36 24 Q. Were you talking about cases?

11:37:37 25 A. We were talking about cases, yeah.

11:37:40 1 Q. Were you interacting with O'Callaghan and Murphy?

11:37:42 2 A. Yes.

11:37:43 3 Q. Were you talking about cases?

11:37:45 4 A. Yes.

11:37:45 5 Q. Wasn't that getting ready for your grand jury testimony?

11:37:48 6 A. No.

11:37:49 7 Q. All right. At some point during this process, you got

11:37:55 8 your hand on the -- your hands-on the internal prosecution

11:37:59 9 memos, correct?

11:37:59 10 A. A memo got into my file when he was picking up a bunch of

11:38:08 11 stuff that I had.

11:38:09 12 Q. All right. Before we talk about how you got it?

11:38:11 13 A. I'm telling you how I got it.

11:38:14 14 Q. I wasn't asking you how you got it. I'm asking you what

11:38:17 15 it is. What you got was a memo that laid out the government's

11:38:20 16 case, correct?

11:38:21 17 A. I don't remember the entire memo.

11:38:23 18 Q. But the gist of it was, it was an internal preindictment

11:38:27 19 prosecution memo?

11:38:28 20 A. Not -- you said I read.

11:38:33 21 Q. Oh, you didn't read it?

11:38:35 22 A. No, I didn't.

11:38:37 23 Q. When you sort of read it, did you see that it was an

11:38:39 24 internal preindictment, let me ask the question, if you would,

11:38:42 25 sir. When you sort of read it, did you see that it was an

11:38:45 1 internal preindictment prosecution memo laying out the
11:38:47 2 government's theory of the case?
11:38:48 3 A. I don't remember everything that it said. I really -- I
11:38:57 4 really just looked at it and said this is not mine. That is
11:39:00 5 not I went down there to pick up.
11:39:04 6 Q. I think we established that you sort of looked at it. Did
11:39:07 7 you sort of get the sense that even though you weren't meant
11:39:11 8 to see it that that's what it was?
11:39:12 9 A. Well, I had no idea about, you know, it being part of a
11:39:18 10 strategy or anything like that, no.
11:39:19 11 Q. But you knew you shouldn't have it, right?
11:39:21 12 A. Yeah, I knew it wasn't mine.
11:39:23 13 Q. You read enough of it to know that you had no business?
11:39:25 14 A. I knew it wasn't mine.
11:39:26 15 Q. How did you get your hands-on the government preindictment
11:39:29 16 prosecution memo?
11:39:30 17 MR. KULWIN: Judge, I am going to object to the
11:39:32 18 question.
11:39:32 19 THE COURT: Rephrase the question.
11:39:33 20 BY MR. LOEVY:
11:39:33 21 Q. How did you get your hands-on this piece of paper?
11:39:37 22 A. I was picking up a bunch of stuff that I had, and it was
11:39:41 23 obviously on the table under something and it got collected up
11:39:45 24 in my stuff.
11:39:46 25 Q. By accident?

11:39:48 1 A. Yeah.

11:39:48 2 Q. Who did it belong to?

11:39:50 3 A. It belonged to the government.

11:39:53 4 Q. All right. You shared this document with another

11:39:55 5 cooperator, didn't you?

11:39:56 6 A. Yeah.

11:39:58 7 Q. Who did you share it with?

11:39:59 8 A. I asked Eugene Hunter to look at it.

11:40:02 9 Q. Why did you ask Eugene Hunter to look at it?

11:40:05 10 A. Basically, the title of it, it didn't seem like it had

11:40:11 11 nothing to do with nothing directly to me, you know, as far as

11:40:15 12 what I was doing, so I let him look at it.

11:40:18 13 Q. Well, even know it had nothing to do, why Eugene Hunter,

11:40:22 14 why did you let him look at it?

11:40:25 15 A. He was available.

11:40:25 16 Q. What did he tell you?

11:40:26 17 A. He said it belongs to the government. He needs to tell

11:40:34 18 Hogan and them.

11:40:34 19 Q. Did you tell Hogan?

11:40:35 20 A. No, I didn't tell him, he told him.

11:40:38 21 Q. Why didn't you tell Hogan that you accidentally got your

11:40:41 22 hands-on the preindictment prosecution memo?

11:40:43 23 MR. KULWIN: Argumentative, ask to be heard.

11:40:45 24 THE COURT: You are going to have to rephrase the

11:40:48 25 question.

11:40:48 1 BY MR. LOEVY:

11:40:49 2 Q. Why did you not tell Hogan that you got your hands-on this
11:40:54 3 piece of paper? I think that was the question.

11:40:56 4 A. Because by the time I talked to Hogan he already knew
11:41:00 5 because Eugene Hunter had already told him.

11:41:01 6 Q. I got you. And Earl Hawkins also got a copy of this
11:41:05 7 document, correct?

11:41:06 8 A. I don't know what Earl got a hold of.

11:41:08 9 Q. This is your deposition in October of 2013 at page 176,
11:41:13 10 lines 13 through 16.

11:41:16 11 "QUESTION: Did you give some other inmates some of
11:41:19 12 those files, some of those documents?

11:41:21 13 "ANSWER: I showed it to what, Henry hair he is and
11:41:26 14 Eugene Hunter

11:41:27 15 "QUESTION: Did you show it to Earl Hawkins?

11:41:30 16 "ANSWER: I think I did. I think I did."

11:41:32 17 Did you give that answer under oath?

11:41:35 18 A. I gave it to Eugene Hunter. He obviously shared it, so
11:41:39 19 you know, at the time, it really didn't matter to me.

11:41:42 20 Q. Doubling back to my question, did you give that answer?

11:41:45 21 A. If that's what you have before you, then, yeah, that's
11:41:48 22 what I gave.

11:41:49 23 Q. And you did review them, didn't you?

11:41:58 24 MR. KULWIN: Objection, Judge. Asked and answered.

11:42:00 25 THE COURT: Sustained.

11:42:00 1 BY MR. LOEVY:

11:42:01 2 Q. Do you remember being asked this question?

11:42:02 3 MR. KULWIN: I'm sorry. I didn't hear your ruling.

11:42:05 4 THE COURT: I sustained that objection, but now he's
11:42:07 5 asking another question.

11:42:08 6 BY MR. LOEVY:

11:42:08 7 Q. On October 13th, 1993, did you give the following answer
11:42:11 8 to the following question.

11:42:13 9 "QUESTION:

11:42:13 10 MR. KULWIN: Judge.

11:42:14 11 THE COURT: Page?

11:42:15 12 MR. LOEVY: Page 13, lines 21 through 23.

11:42:18 13 MR. KULWIN: He is impeaching him with something he
11:42:22 14 doesn't know the answer.

11:42:23 15 THE COURT: I disagree. The objection is overruled.

11:42:25 16 BY MR. LOEVY:

11:42:25 17 Q. Were you asked this?

11:42:26 18 "QUESTION: Question did you review those along with
11:42:28 19 some. Other cooperating witnesses? Let me back up so I am
11:42:32 20 very clear what we are talking about. Line 12.

11:42:34 21 "QUESTION: Did you share those documents with the
11:42:36 22 other cooperating witnesses, let them review them?

11:42:38 23 "ANSWER: Yes.

11:42:39 24 "QUESTION: And these documents that had the
11:42:41 25 government's theory of the case, the evidence, and the

11:42:45 1 prospective charges against each defendant is that true?

11:42:51 2 "ANSWER: All that.

11:42:53 3 "QUESTION: All of that was in there so you reviewed
11:42:55 4 those along with some of the other cooperating witnesses isn't
11:42:58 5 that correct?

11:42:59 6 "ANSWER: Yeah, we reviewed. Yeah, absolutely."

11:43:02 7 Did you give that testimony under oath?

11:43:03 8 A. If that's what you have before you, then that's my answer.

11:43:07 9 Q. Was it true?

11:43:07 10 A. Was it true? What was true?

11:43:11 11 THE COURT: The testimony he just read. That's what
11:43:13 12 he's asking you about.

11:43:14 13 THE WITNESS: Yeah, the testimony is true. He's got
11:43:17 14 it right in front of him.

11:43:18 15 BY MR. LOEVY:

11:43:18 16 Q. When you reviewed the memos, the papers, isn't it true
11:43:21 17 that what you saw was the government's theory of the evidence
11:43:23 18 that proved all of the predicate acts?

11:43:26 19 A. That's a compound question. Break that down.

11:43:33 20 Q. When you reviewed these papers, they laid out the
11:43:37 21 government's case, right?

11:43:38 22 A. If that's what the document was about, yeah.

11:43:41 23 Q. And when you reviewed those papers, you saw facts relating
11:43:44 24 to cases you were going to testify in, correct?

11:43:46 25 A. Yeah. Yeah.

11:43:52 1 Q. This was before you testified, correct?

11:43:54 2 A. Yeah.

11:43:57 3 Q. This was 1989, wasn't it?

11:43:59 4 A. Yeah.

11:43:59 5 Q. Isn't it true that copies were made of these documents

11:44:06 6 before they were retrieved?

11:44:08 7 A. I don't know about that. I don't remember making no

11:44:12 8 copies. I didn't have a copier.

11:44:15 9 Q. Remember this statement on July 22nd, 1993, at page 710.

11:44:20 10 "QUESTION: Did you show them to anybody else?

11:44:23 11 "ANSWER: I only remember showing them to hunter and he

11:44:26 12 got to talking about making some copies.

11:44:28 13 "QUESTION: Did he make copies?

11:44:30 14 "ANSWER: I think he did."

11:44:32 15 Did you give that testimony?

11:44:33 16 A. If that's what you have before, but that don't mean I made

11:44:37 17 copies.

11:44:38 18 Q. All right. Isn't it true that you testified at the grand

11:44:49 19 jury based on a prepared statement that Hogan wrote up after

11:44:54 20 he interacted with you?

11:44:54 21 A. The grand jury?

11:45:04 22 Q. Yes.

11:45:04 23 A. He asked questions, I answered questions.

11:45:06 24 Q. I'm asking isn't it true he had a prepared statement that

11:45:09 25 you and him had worked out and then he read it to you at the

11:45:13 1 grand jury?

11:45:13 2 A. This prepared statement was prepared by him.

11:45:19 3 Q. Do you remember giving this testimony on November the
11:45:21 4 17th, 1994, at page 176 lines 5 through 12.

11:45:27 5 "QUESTION: Now you gave your grand jury testimony from
11:45:29 6 a prepared statement from Mr. Hogan, did you not?

11:45:31 7 "ANSWER: That's correct.

11:45:33 8 "QUESTION: And Mr. Hogan wrote that statement up?

11:45:36 9 "ANSWER: Yes.

11:45:37 10 "QUESTION: And he read that to you in a narrative form
11:45:40 11 during the grand jury proceedings?

11:45:41 12 "ANSWER: Yes, he did."

11:45:43 13 Did you give that testimony?

11:45:44 14 A. That's exactly what happened.

11:45:45 15 Q. All right. Does that refresh your recollection that what
11:45:47 16 happened was he read you a long document and you said that's
11:45:50 17 accurate, that's accurate, that's accurate?

11:45:52 18 A. Right.

11:45:52 19 Q. And what was your understanding at this point in time what
11:46:02 20 was in it for you forgiving that testimony?

11:46:06 21 THE COURT: Are you talking about the grand jury
11:46:07 22 testimony?

11:46:08 23 MR. LOEVY: Yes, at that time.

11:46:09 24 BY MR. LOEVY:

11:46:09 25 Q. What was your understanding of what was going to benefit

11:46:11 1 Derrick Kees?

11:46:11 2 A. We hadn't come to that part.

11:46:15 3 Q. What was that?

11:46:15 4 A. We hadn't come to that part right there.

11:46:17 5 Q. How many -- you were testifying against more than a dozen

11:46:20 6 of your colleagues?

11:46:21 7 A. You're talking about the grand jury.

11:46:23 8 Q. That's what I'm talking about?

11:46:24 9 A. The grand jury is early in the process.

11:46:26 10 Q. I'm asking you at the grand jury you're implicating more

11:46:28 11 than a dozen of your colleagues, correct?

11:46:30 12 A. Yeah, I am pretty much talking about the entire El Rukn

11:46:35 13 government.

11:46:35 14 Q. You're saying it hadn't come up what's in it for Derrick

11:46:39 15 Kees at that point?

11:46:39 16 A. Oh, yeah, Derrick Kees definitely asked about that.

11:46:41 17 Q. Okay. What did they tell you?

11:46:43 18 A. We hadn't come to that part yet.

11:46:44 19 Q. Okay.

11:46:46 20 A. We hadn't got to all of that part.

11:46:48 21 Q. Isn't it true you were threatened that they would send you

11:46:51 22 back to death row if you didn't cooperate?

11:46:54 23 A. There were times that I felt that way. As a matter of

11:47:03 24 fact, I wasn't on death row and I felt it if I had another

11:47:07 25 state murder case, that's where I'd be going.

11:47:09 1 Q. And you were instructed to lie if the judge asked you if
11:47:13 2 there was any promises, correct?

11:47:15 3 A. I was never instructed to lie.

11:47:19 4 Q. You told the judges you had no side agreements, no
11:47:23 5 understanding about a sentence, correct, when you testified?

11:47:26 6 A. Yeah.

11:47:31 7 Q. All right. This is your testimony on November 16th, 1994,
11:47:35 8 at Page 91. Were you asked these questions and give these
11:47:40 9 answers.

11:47:42 10 "QUESTION: Was anything else said to you?

11:47:45 11 "ANSWER: You.

11:47:46 12 "QUESTION: By Mr. Hogan concerning your plea or plea
11:47:50 13 agreement?

11:47:50 14 "ANSWER: Yes.

11:47:52 15 "QUESTION: What?

11:47:53 16 "ANSWER: He said after he explained all that, that
11:47:57 17 what I just previously said, he said, he told me he said when
11:48:01 18 the judge asks you about any other representations made about
11:48:04 19 the plea agreement in the written plea agreement, he said say
11:48:07 20 no and don't tell Mike Mann."

11:48:10 21 That's what he told you, right?

11:48:14 22 A. That's what I testified to?

11:48:16 23 Q. That's what he told you, right?

11:48:18 24 A. Is that what you're saying I testified to?

11:48:20 25 MR. LOEVY: Your Honor, may I put it on the screen so

11:48:22 1 he can see it only?

11:48:23 2 THE COURT: So he can see it only. Give me a second.
11:48:28 3 Now you can put it on the screen.

11:48:30 4 BY MR. LOEVY:

11:48:31 5 Q. This is 91, line 23 there. Do you see at the bottom. And
11:48:44 6 then continuing through line ten. Mike m-a-n-n-^ ?

11:49:01 7 THE COURT: Okay. So did he accurately read the
11:49:03 8 testimony before?

11:49:04 9 THE WITNESS: Yeah.

11:49:05 10 THE COURT: He said yes. Go ahead, Mr. Loevy.

11:49:07 11 MR. LOEVY: May I have a moment, your Honor? Let me
11:49:16 12 get a transcript.

11:49:18 13 (Brief pause.)

11:49:27 14 BY MR. LOEVY:

11:49:33 15 Q. Am and although you told -- you were told not to say you
11:49:37 16 had been given any promises but that you had been given
11:49:40 17 promises, correct?

11:49:40 18 A. I thought so.

11:49:45 19 Q. And you thought so because you had been made promises,
11:49:48 20 right?

11:49:48 21 A. I thought so.

11:49:50 22 Q. All right. So since you thought so, when you told the
11:49:53 23 judges that you hadn't been made promises, you were lying,
11:49:56 24 correct?

11:49:56 25 A. I found out different.

11:50:02 1 Q. All right. You had been instructed to say you hadn't been
11:50:04 2 made any promises even though you had, correct?

11:50:06 3 A. At that point, it was -- everything is kind of ambiguous
11:50:15 4 and confusing and it was like a back and forth thing.

11:50:19 5 Q. Do you remember being asked this question. This is on
11:50:21 6 page 132 of the same transcript.

11:50:24 7 "QUESTION: And you're telling us, sir, that Mr. Hogan
11:50:27 8 told you if you were asked about these promises by Judge Aspen
11:50:30 9 at your guilty plea to deny them is that right?

11:50:32 10 "ANSWER: He said to say no."

11:50:36 11 That's what you were told, right?

11:50:38 12 A. If that's what the document right there is saying.

11:50:40 13 Q. But that's what happened, isn't it?

11:50:41 14 A. That's what I testified to.

11:50:44 15 Q. And you were specifically told that with you being able to
11:50:54 16 represent yourself as having a 99 year sentence that would
11:50:57 17 make you more credible in these trials, right?

11:50:59 18 A. I never represented myself.

11:51:05 19 MR. KULWIN: Your Honor.

11:51:06 20 THE COURT: The objection is overruled.

11:51:07 21 BY MR. LOEVY:

11:51:08 22 Q. Do you remember being asked these questions and giving
11:51:09 23 these answers. This is page 90, lines 17 through 23.

11:51:12 24 "QUESTION:

11:51:14 25 THE WITNESS: Can I see it?

11:51:17 1 MR. LOEVY: Sure.

11:51:17 2 THE COURT: Just put it up there.

11:51:25 3 THE WITNESS: Starting where?

11:51:26 4 BY MR. LOEVY:

11:51:26 5 Q. Line 17.

11:51:27 6 "QUESTION: Did he tell you anything else regarding the

11:51:29 7 reason that --

11:51:30 8 "ANSWER: Yes, he did

11:51:32 9 "QUESTION: That the sentence was 99?

11:51:34 10 "ANSWER: Yes.

11:51:35 11 "QUESTION: What else did he say?

11:51:37 12 "ANSWER: He said that it would look good in trial and

11:51:39 13 it would make a more believable witness."

11:51:43 14 Correct?

11:51:44 15 A. That's what the testimony says right here.

11:51:47 16 Q. That's your testimony, right?

11:51:48 17 A. It is my testimony.

11:51:49 18 Q. So you intentionally to make yourself a more believable

11:51:54 19 witness gave the judge the false impression that you were in

11:51:57 20 for 99 even though you knew they were going to take care of

11:52:00 21 you later?

11:52:00 22 A. Is that a question?

11:52:14 23 Q. It is.

11:52:15 24 A. Say it again.

11:52:16 25 Q. You intentionally misrepresented to the judges that you

11:52:19 1 believed you were in for 99 years even though you knew you had
11:52:22 2 a deal that you were going to do less and you did that in
11:52:26 3 order to make yourself look better on the stand; isn't that
11:52:26 4 true?

11:52:34 5 A. That sounds like more than one question.

11:52:35 6 Q. Mr. Hogan wanted you to testify at trials, correct?

11:52:40 7 A. Yes.

11:52:41 8 Q. And you didn't really want to do that after a while,
11:52:46 9 right?

11:52:46 10 A. That was really not the case.

11:52:50 11 Q. And isn't it true that the only reason you went through
11:52:53 12 with it is because you had been made this promise that you'd
11:52:56 13 do less time?

11:52:57 14 A. My perception was that, sure, I would be rewarded in some
11:53:05 15 type of way, yeah.

11:53:06 16 Q. All right. Isn't it true that on the day -- at some point
11:53:14 17 Hogan threatened you that death awaited you if you didn't
11:53:16 18 cooperate with the proffer?

11:53:17 19 A. Do you have that in testimony, to?

11:53:25 20 Q. That's a question, sir. Didn't Hogan tell you something
11:53:28 21 like that?

11:53:28 22 A. No, he didn't tell me anything like that.

11:53:32 23 Q. What's that?

11:53:33 24 A. No, he didn't tell me anything like that.

11:53:34 25 Q. This is your testimony, November 16th, 1994, at page 99.

11:53:42 1 A. Where are we starting?

11:53:43 2 Q. Line 21.

11:53:44 3 A. Okay.

11:53:44 4 Q.

11:53:45 5 "QUESTION: Well, when you asked them or did you ask
11:53:47 6 him, let me ask you, what would be done for you?

11:53:49 7 "ANSWER: Well, the next day, when I was brought in to
11:53:52 8 testify -- actually testify, I asked Hogan had he contacted
11:53:55 9 Mike Mann and I asked, you know, did he talk to the U.S.
11:54:00 10 attorneys, what they examining do tore me. And Hogan, he
11:54:04 11 looked at me and said, Derrick, death waits for you over there
11:54:07 12 in the state, you know. It scared me, you know. I

11:54:13 13 THE COURT: Looked at Hogan.

11:54:14 14 BY MR. LOEVY:

11:54:15 15 Q. I looked at Hogan, I said that's like putting a gun to my
11:54:18 16 head. He said, yeah, it is and I'm making the rules. Did you
11:54:21 17 give that answer?

11:54:22 18 A. Yeah, I remember that.

11:54:24 19 Q. And you went through with the proffer and Hogan's
11:54:28 20 statement because you felt you had no choice, correct?

11:54:30 21 MR. KULWIN: Judge, objection as to what proffer,
11:54:32 22 what statement, it's five years after the proffer, five years
11:54:36 23 later.

11:54:36 24 BY MR. LOEVY:

11:54:37 25 Q. You were cooperating in a number of cases, correct?

11:54:38 1 A. Yeah.

11:54:39 2 Q. And isn't it true that each time you had to tell a story
11:54:42 3 about a lot of cases, right?

11:54:44 4 MR. KULWIN: Objection as to story.

11:54:45 5 BY MR. LOEVY:

11:54:46 6 Q. You had to testify about a lot of cases, right?

11:54:50 7 A. I did testify about a lot of cases.

11:54:51 8 Q. One of them was the Smith/Hickman murder?

11:54:53 9 A. Yeah.

11:54:53 10 Q. And you felt you were being threatened that if you didn't
11:54:56 11 go through with the whole thing, that death awaited you?

11:55:00 12 MR. KULWIN: Objection, Judge.

11:55:01 13 THE COURT: Overruled.

11:55:02 14 THE WITNESS: I was already obligated, so why would I
11:55:06 15 back out then, you know, regardless of what our conversation
11:55:10 16 was.

11:55:10 17 BY MR. LOEVY:

11:55:20 18 Q. Isn't it true, and last question on the lying under oath,
11:55:23 19 but you did lie under oath?

11:55:25 20 MR. KULWIN: Judge, I am going to object to the
11:55:27 21 comment.

11:55:27 22 THE COURT: The objection is sustained.

11:55:29 23 MR. ART: Isn't it true.

11:55:30 24 THE COURT: The comment is sustained. The jury is
11:55:32 25 directed to disregard it.

11:55:34 1 BY MR. LOEVY:

11:55:34 2 Q. You lied under oath on Hogan's instructions to lie?

11:55:37 3 MR. KULWIN: Objection, asked and answered..

11:55:39 4 THE COURT: Sustained.

11:55:42 5 BY MR. LOEVY:

11:55:42 6 Q. All right. There came a point when you did not in 1994

11:55:47 7 when you testified about a number of cases including the

11:55:50 8 Smith/Hickman case, correct? I'm sorry, January 93.

11:55:53 9 A. You compounding your questions. Break it down.

11:55:59 10 Q. Thank you.

11:56:00 11 In 1993, January, there came a time when you were

11:56:03 12 going to be called onto give your testimony about all the

11:56:05 13 different cases, correct?

11:56:08 14 A.

11:56:10 15 MR. NOLAND: Objection, form, Judge.

11:56:11 16 THE COURT: Overruled.

11:56:12 17 MR. NOLAND: Compound.

11:56:13 18 THE COURT: It's not compound. Overruled.

11:56:16 19 THE WITNESS: I knew that when I testified.

11:56:18 20 BY MR. LOEVY:

11:56:18 21 Q. Hogan did a briefing with you to prepare for that

11:56:21 22 testimony?

11:56:21 23 A. Yeah.

11:56:23 24 Q. And you refused to come out of your cell?

11:56:25 25 A. What was that date again?

11:56:34 1 Q. January 1993.

11:56:35 2 A. I remember having an altercation at the MCC.

11:56:42 3 Q. The warden was instructing you go talk to Hogan before
11:56:46 4 your testimony, right?

11:56:46 5 A. Well, it didn't start because of Hogan. It started
11:56:53 6 because of something else.

11:56:53 7 Q. All right.

11:56:54 8 A. Hogan ended up getting involved.

11:56:56 9 Q. And then the orange crush came and got you out of the
11:56:59 10 cell?

11:57:00 11 MR. KULWIN: Objection as to orange crush, Judge.

11:57:02 12 THE COURT: Rephrase the question.

11:57:04 13 BY MR. LOEVY:

11:57:04 14 Q. Six or seven big guys in riot gear and helmets came and
11:57:08 15 got you out of the cell?

11:57:09 16 A. They were standing out there: They were just standing out
11:57:15 17 there, but I agreed to come out.

11:57:16 18 Q. All right. And you were still trying to make sure you got
11:57:19 19 your deal, right?

11:57:20 20 A. I always wanted a deal, so let's get that out.

11:57:28 21 Q. You stopped trying -- you stopped starting to trust them,
11:57:35 22 didn't you?

11:57:36 23 A. Phrase that again.

11:57:43 24 Q. At some point you filed a motion asking to enforce the
11:57:46 25 agreement that you had been promised, correct? That's a

11:58:02 1 question.

11:58:03 2 A. I am going to need to come through my lawyer that

11:58:10 3 something was coming my way.

11:58:11 4 Q. Isn't it true that for most of that time you thought Hogan

11:58:14 5 was your lawyer?

11:58:14 6 A. Not at all.

11:58:15 7 Q. Not at all. You never thought Bill Hogan was your lawyer?

11:58:19 8 A. No.

11:58:21 9 Q. And isn't it true that you thought Bill Hogan was your

11:58:25 10 lawyer is because Mr. O'Callaghan told you that he was?

11:58:27 11 A. I just said I never thought he was my lawyer.

11:58:30 12 MR. LOEVY: May I have a moment, your Honor?

11:58:31 13 THE COURT: Yes.

11:58:34 14 (Brief pause.)

11:58:42 15 BY MR. LOEVY:

11:58:42 16 Q. Do you remember giving this statement on November 16th,

11:58:45 17 1994, at page 76.

11:58:49 18 A. Let me see that.

11:58:51 19 Q. Lines 18 through 15. I'm sorry, lines 8 through 15?

11:59:00 20 THE COURT: 11 through 15.

11:59:01 21 THE WITNESS: 11 through 15.

11:59:03 22 THE COURT: Or 9 through 15.

11:59:05 23 THE WITNESS: It's not real clear over here.

11:59:08 24 BY MR. LOEVY:

11:59:08 25 Q. I'll read it. Okay.

11:59:13 1 "ANSWER:

11:59:14 2 "QUESTION: Do you recall that? I'll backup.

11:59:17 3 "QUESTION: Here at 219, this building, answer in this

11:59:21 4 building here on the 24th floor.

11:59:22 5 "QUESTION: And how were you taken there by

11:59:26 6 O'Callaghan? Yeah O'Callaghan brought.

11:59:28 7 "QUESTION: Do you recall?

11:59:29 8 "ANSWER: It was a U.S. Marshal with O'Callaghan. I

11:59:32 9 was brought from the state by another car by some state

11:59:35 10 officers. Okay okay when I got there, then I met O'Callaghan

11:59:38 11 and another guy named t-i-n-t-i-l-l-a, another U.S. Marshal.

11:59:45 12 Okay. O'Callaghan talked with me and then he had Hogan.

11:59:49 13 Quote, this is Bill Hogan from the U.S. Attorney's Office,

11:59:52 14 this is your lawyer. Did you make that statement

11:59:54 15 A. Who asked this question?

12:00:10 16 Q. You. This is your direct in U.S. v. Kees. Did you make

12:00:19 17 that statement?

12:00:19 18 A. My answer is at line 9.

12:00:31 19 Q. That's what I read, correct?

12:00:37 20 THE COURT: The question is did he read the testimony

12:00:42 21 correct?

12:00:42 22 THE WITNESS: Yeah, he read the testimony correct.

12:00:44 23 Yeah.

12:00:46 24 BY MR. LOEVY:

12:00:46 25 Q. Now, the reason you filed that motion was because you

12:00:51 1 believed that Mr. O'Callaghan had made you a promise that your
12:00:54 2 time would be cut if you followed through, correct?

12:00:57 3 MR. KULWIN: Judge, I am going to object as to what
12:01:02 4 he represented, it's not correct, O'Callaghan.

12:01:04 5 THE COURT: It's the question.

12:01:07 6 MR. KULWIN: Judge, we'd like to be heard, please.
12:01:10 7 (The following proceedings were had at sidebar outside the
12:01:26 8 hearing of the jury:)

12:01:26 9 MR. LOEVY: Here's the testimony that I propose to
12:01:27 10 read.

12:01:34 11 THE COURT: He showed me page 79 from what date is
12:01:37 12 this? Is this the same transcript?

12:01:40 13 MR. LOEVY: Same transcript.

12:01:41 14 THE COURT: November 16, 94. At that point in time
12:01:46 15 had either O'Callaghan or Murphy made to you any promises that
12:01:50 16 about sentence that you would receive as far as numbers.

12:01:53 17 "ANSWER: No. Dave O'Callaghan told me I wouldn't have
12:01:56 18 to do all my time. Okay. So what's the objection?

12:02:01 19 MR. KULWIN: Here's your ruling at the second trial.
12:02:03 20 The Court, I am not going --

12:02:05 21 THE COURT: This is page 2462.

12:02:09 22 MR. KULWIN: We talked about this this morning.

12:02:17 23 THE COURT: I want to make sure that this is the same
12:02:18 24 this. Okay? That's what I'm trying to figure out.

12:02:24 25 That's the thing I ruled on. It's excluded.

12:02:50 1 MR. KULWIN: Thank you.

12:02:54 2 (The following proceedings were had in open court in the
12:02:55 3 presence and hearing of the jury:)

12:02:55 4 THE COURT: Okay. The objection is sustained.

12:02:59 5 BY MR. LOEVY:

12:03:05 6 Q. All right. Sir, fast forward to 2013, you gave a
12:03:13 7 deposition in this case, correct?

12:03:15 8 A. 2013, I testified.

12:03:26 9 Q. The question was you gave a deposition?

12:03:28 10 THE COURT: You gave a deposition.

12:03:29 11 BY MR. LOEVY:

12:03:29 12 Q. On October the 7th, 1993, you gave a deposition in this
12:03:32 13 case, correct, sir?

12:03:33 14 A. Do you have it?

12:03:35 15 Q. Yes. Let me have a keep of Mr. Kees' deposition, guys.

12:03:58 16 MR. LOEVY: May I approach, your Honor?

12:03:59 17 THE COURT: Yes.

12:04:01 18 THE WITNESS: Yep.

12:04:02 19 BY MR. LOEVY:

12:04:03 20 Q. Thank you.

12:04:04 21 And prior to giving the deposition in this case, they
12:04:07 22 cut your time, correct?

12:04:09 23 MR. NOLAND: Judge, objection.

12:04:10 24 THE COURT: Sustained.

12:04:11 25 BY MR. LOEVY:

12:04:11 1 Q. The state cut your time?

12:04:14 2 A. The state cut my time, I think I was -- I think I was done
12:04:22 3 testifying.

12:04:23 4 Q. Okay. As a matter of fact, you testified, the deposition
12:04:27 5 was on the 7th and then they took you over to see judge Ford
12:04:30 6 on the 9th, right?

12:04:31 7 A. Okay. Yeah.

12:04:36 8 Q. And then you went back on the stand in a different
12:04:38 9 proceeding on the 10th, right?

12:04:39 10 A. Is that a true fact?

12:04:44 11 Q. I'm asking you if you remember it that way, that you
12:04:47 12 started testifying, then they cut your time, then you
12:04:49 13 testified again? Either you remember it that way or you
12:04:59 14 don't. Do you remember it that way?

12:05:00 15 A. I don't quite remember, you know.

12:05:01 16 Q. All right. Prior to the deposition, you met with
12:05:05 17 Mr. Sexton, the state's attorney, for a couple hours to go
12:05:07 18 over the documents, correct?

12:05:08 19 A. Okay.

12:05:10 20 Q. What's that?

12:05:11 21 A. Yeah.

12:05:11 22 Q. And by the documents, I mean the document relating to the
12:05:14 23 Smith/Hickman case, right?

12:05:15 24 A. Okay. Yeah.

12:05:16 25 Q. And you went over the transcripts of your prior testimony

12:05:24 1 about Smith/Hickman?

12:05:25 2 A. Yes.

12:05:25 3 Q. And Mr. Sexton left you copies of your old testimony from
12:05:30 4 Smith/Hickman to study up, right?

12:05:31 5 A. He asked me to review them.

12:05:33 6 Q. And did you?

12:05:33 7 A. Yeah, I reviewed them.

12:05:35 8 Q. Then you went before judge Ford over at 26th and Cal to
12:05:38 9 get your time cut, correct?

12:05:40 10 A. Yeah.

12:05:40 11 Q. And how much did they cut your time by?

12:05:43 12 A. They cut my time five years.

12:05:47 13 Q. Five years?

12:05:48 14 A. In the state.

12:05:49 15 Q. And when they explained to judge Ford that they were going
12:05:52 16 to cut your time, you had to tell them what your out date was,
12:05:56 17 right?

12:05:56 18 MR. NOLAND: Judge, objection as to they.

12:05:58 19 THE COURT: Rephrase the question.

12:06:00 20 BY MR. LOEVY:

12:06:01 21 Q. The person there --

12:06:02 22 THE COURT: Just ask --

12:06:03 23 BY MR. LOEVY:

12:06:05 24 Q. I'm sorry. The person there was state's attorney Sexton,
12:06:09 25 right?

12:06:09 1 A. Yeah.

12:06:09 2 Q. What's his first name? All right?

12:06:15 3 THE COURT: It doesn't really matter.

12:06:17 4 BY MR. LOEVY:

12:06:17 5 Q. Whatever pronoun I use, that's who I am talking about.

12:06:20 6 A. Yeah, I know what you're talking about.

12:06:22 7 Q. The judge asked you what your out date was, correct?

12:06:25 8 A. I don't remember everything the judge asked me.

12:06:29 9 Q. All right. This is the October 9th, 2013, proceeding
12:06:33 10 before judge Ford at page 8.

12:06:36 11 THE COURT: Do you want to put it up there so he can
12:06:38 12 see it?

12:06:39 13 MR. LOEVY: All right.

12:06:40 14 BY MR. LOEVY:

12:06:42 15 Q. You were asked, well, in your presence, the Court asked,
12:06:47 16 well, what's his current out date from the federal, his first
12:06:50 17 eligibility date from the federal parole? And then
12:06:55 18 Mr. Sexton, you know what? And the Court said, do you know
12:06:57 19 that? Mr. Sexton said I do not know that first has been.
12:07:06 20 Then you said 2042. And the court said 2042. You know that
12:07:11 21 happened?

12:07:11 22 A. Yeah.

12:07:12 23 Q. That wasn't true?

12:07:13 24 A. That was -- that was the last date that I heard from my
12:07:16 25 case manager at the unit.

12:07:17 1 Q. Do you remember giving this statement on October the 10th,
12:07:23 2 the day after that happened at page 75?

12:07:27 3 MR. KULWIN: Can you --

12:07:28 4 MR. LOEVY: The 10/10 transcript, the same
12:07:32 5 proceeding.

12:07:33 6 THE WITNESS: Can you show me?

12:07:34 7 BY MR. LOEVY:

12:07:34 8 Q. You were asked the following question and gave the
12:07:36 9 following answers. When you went before judge Ford yesterday
12:07:40 10 afternoon and he asked you what your earliest possible out
12:07:43 11 date was, what did you tell him? Answer answer I told him
12:07:46 12 2042.

12:07:46 13 "QUESTION: That wasn't correct, was it?

12:07:48 14 "ANSWER: I might have had the number wrong."

12:07:52 15 Did you give that testimony, sir?

12:07:54 16 A. That's the testimony I gave.

12:07:55 17 Q. What was your out date after you were done testifying at
12:08:00 18 the 2013 proceeding and Mr. Fields' deposition? What would
12:08:09 19 the right number have been?

12:08:11 20 A. The number was 2042 until they showed it to me on
12:08:15 21 documents.

12:08:15 22 Q. Okay. So what should you have said if you had testified
12:08:19 23 truthfully?

12:08:20 24 A. I said what I should have said.

12:08:21 25 Q. 2042?

12:08:24 1 A. Yeah.

12:08:24 2 Q. What was your actual out date? I think we're missing each

12:08:27 3 other?

12:08:27 4 A. Yeah, we are.

12:08:29 5 Q. On October 2013, what was your actual out date?

12:08:33 6 A. As of October 2013, be before or after I got the

12:08:39 7 reduction?

12:08:39 8 Q. Say before.

12:08:41 9 A. Before, it was 2042.

12:08:43 10 Q. Okay.

12:08:44 11 A. As far as I knew.

12:08:45 12 Q. And then when you got the reduction, what was your out

12:08:47 13 date?

12:08:47 14 A. It came down a couple of years.

12:08:53 15 Q. Well, let's be precise. I assume you knew what your out

12:08:56 16 date was, right?

12:08:58 17 2042 is where you started. After 2013, what was your

12:09:01 18 new out date after that cooperation against Mr. Fields?

12:09:04 19 A. I can't see that.

12:09:05 20 Q. I'll write it accurate. What year?

12:09:09 21 A. That would be five years earlier.

12:09:16 22 Q. Okay. You knew exactly how many years they were cutting,

12:09:20 23 didn't you?

12:09:20 24 A. I said five years.

12:09:22 25 Q. I don't want to put words in your mouth. Are you saying

12:09:25 1 after 2013 your out date was 2037?

12:09:29 2 A. Yeah, okay.

12:09:30 3 Q. If your out date was 2037 in October of 2013, then why are
12:09:37 4 you going to be free three years from now or how many years
12:09:42 5 from now, five years from now?

12:09:44 6 A. I asked for a Rule 35.

12:09:47 7 Q. It's your understanding you were going to walk out of
12:09:53 8 prison on what date?

12:09:54 9 A. I don't have the exact date.

12:09:56 10 Q. I bet you do?

12:09:58 11 A. Somewhere.

12:09:58 12 MR. KULWIN: I object to that. Ask it be stricken.

12:10:02 13 THE COURT: The comment is stricken.

12:10:03 14 BY MR. LOEVY:

12:10:03 15 Q. You know the exact date you are going to walk out of
12:10:05 16 prison, don't you, sir?

12:10:07 17 A. It's like November 2021, something like that.

12:10:12 18 Q. Did you say 20 or 21?

12:10:16 19 THE COURT: No, he said November of the year 2021, is
12:10:19 20 that what you said?

12:10:20 21 THE WITNESS: That's what I said, your Honor.

12:10:22 22 BY MR. LOEVY:

12:10:25 23 Q. You have not cooperated against any other witnesses
12:10:28 24 between 2013 and this trial, have you?

12:10:30 25 A. No.

12:10:32 1 Q. Just Mr. Fields and this civil proceeding since 2013,
12:10:36 2 correct?

12:10:37 3 A. Correct.

12:10:38 4 Q. Let's talk about your story --

12:10:43 5 MR. KULWIN: Judge, I am going to object to story.
12:10:47 6 It's argumentative.

12:10:48 7 MR. LOEVY: We don't concede that it's --

12:10:50 8 THE COURT: Okay. I have to make rulings on whether
12:10:54 9 questions are argumentative. I am sustaining the objection.

12:10:56 10 MR. LOEVY: All right.

12:10:56 11 BY MR. LOEVY:

12:10:56 12 Q. Let's talk about your allegations that you knew something
12:10:59 13 about the Smith/Hickman murder and Mr. Fields. All right,
12:11:02 14 sir?

12:11:02 15 A. Okay.

12:11:03 16 Q. Let's -- you were not present when Mr. Jerome Fuddy Smith
12:11:11 17 was murdered, correct?

12:11:12 18 A. That is correct.

12:11:13 19 Q. You did not witness the murder?

12:11:14 20 A. That is correct.

12:11:14 21 Q. So you had no firsthand personal knowledge of who did it?

12:11:18 22 MR. KULWIN: Objection as to the firsthand personal
12:11:21 23 knowledge.

12:11:21 24 THE COURT: You've sustained 403.

12:11:23 25 BY MR. LOEVY:

12:11:25 1 Q. So you were still notwithstanding lacking personal
12:11:28 2 knowledge, you were still able to get a deal in relation to
12:11:32 3 this particular murder, correct?
12:11:34 4 MR. KULWIN: Judge, I am going to object.
12:11:35 5 THE COURT: Sustained, argumentative.
12:11:36 6 BY MR. LOEVY:
12:11:37 7 Q. All right. You claim you were part of the Smith/Hickman
12:11:45 8 hit team, correct?
12:11:46 9 A. He was part of the El Rukn team.
12:11:54 10 Q. Okay. Who was the hit team that Jeff Fort assigned to
12:11:59 11 kill Hickman and Smith? It was you, right?
12:12:04 12 A. Me.
12:12:07 13 Q. Earl Hawkins?
12:12:08 14 A. Earl Hawkins.
12:12:09 15 Q. Who else, sir?
12:12:10 16 A. Harry Evans.
12:12:17 17 Q. Who else was on the Smith/Hickman hit team?
12:12:20 18 A. That depends.
12:12:21 19 Q. I'm asking who the four guys were?
12:12:24 20 A. You mean the four people that killed him or the four
12:12:27 21 people that --
12:12:28 22 Q. The four people you claim were on the hit team is you,
12:12:31 23 Hawkins, Harry Evans and Anthony Sumner, right?
12:12:34 24 MR. KULWIN: Judge, I am object for lack of
12:12:37 25 foundation.

12:12:37 1 THE COURT: What we are going to do since I don't
12:12:39 2 have any cases up at 1:30, I have a little more flexibility of
12:12:45 3 when we are going to take the lunch break. We are going to do
12:12:48 4 it now. I am going to take the jury out.

12:13:19 5 (The jury leaves the courtroom.).

12:13:19 6 THE COURT: Everybody stay here other than the
12:13:21 7 witness. I'll be right out.

12:13:21 8 (Brief pause.)

12:15:06 9 THE COURT: The question is vague. I mean, I don't
12:15:08 10 know what you mean by "hit." I don't know what you mean by
12:15:11 11 "hit team." You may know what you mean by hit time.

12:15:13 12 Everybody else can sit down other than the people I
12:15:17 13 am talking to. That would be him. You guys can have a seat.

12:15:20 14 I know that because I have seen you try a lot of
12:15:23 15 cases including this one part that of the MO is putting the
12:15:26 16 whole theory in through the way you ask questions. You're not
12:15:28 17 going to get to do that with this witness and it's to stop
12:15:31 18 right now. Okay? You're courting disaster with a witness
12:15:34 19 like this. You are courting disaster. If you didn't pick
12:15:38 20 that up in the first two minutes of his testimony, then it's
12:15:40 21 only because you are not paying attention.

12:15:42 22 You're going to have to ask tighter questions. You
12:15:45 23 can't -- you can't be asking him, what's hit team? I don't
12:15:49 24 know what that means. Does that mean the people that planned
12:15:51 25 it, does that mean the people that did it? It's obvious you

12:15:55 1 didn't know what you meant by that. You are not going to be
12:15:57 2 able to do that.

12:15:59 3 Do you understand what I'm telling you?

12:16:01 4 MR. LOEVY: I do.

12:16:01 5 THE COURT: You know, sanctions can go every which
12:16:05 6 way in this case. It can go every which way in this case if
12:16:09 7 there ends up being a mistrial. It doesn't just apply to the
12:16:11 8 defendants. It applies to you personally.

12:16:14 9 I don't think you are paying attention to what the
12:16:16 10 guy is saying, first of all. You ask him a question and you
12:16:18 11 are staring down at the page and not even looking at the guy.
12:16:21 12 It's going to have to be done in a tighter way. If that's not
12:16:27 13 your MO, then you better fix your MO in the next hour. That's
12:16:31 14 what I'm telling you.

12:16:31 15 MR. LOEVY: I understand, your Honor.

12:16:32 16 I would like to be heard.

12:16:34 17 THE COURT: On what?

12:16:35 18 MR. LOEVY: On that.

12:16:35 19 THE COURT: Do you disagree with what I am saying?

12:16:35 20 MR. LOEVY: Not at all.

12:16:36 21 THE COURT: What do you want to tell me then?

12:16:38 22 MR. LOEVY: I understand you're saying.

12:16:36 23 THE COURT: What do you want to tell me?

12:16:38 24 MR. LOEVY: What I want to tell you is every time
12:16:39 25 this man has told the story, the hit team was him, Harry

12:16:43 1 Evans, Earl Hawkins. The fact that he's trying to change it
12:16:49 2 now, IT will be the first time he's ever told the story
12:16:51 3 differently.

12:16:51 4 THE COURT: Where is the question at which he
12:16:52 5 responded to -- let me see it. I want to see it, "hit team."

12:16:55 6 MR. LOEVY: I will show you.

12:16:56 7 THE COURT: If that's the case, then you have a basis
12:16:57 8 for and he answered it that way. Hit team. If that's the
12:17:01 9 case, then you have a basis for asking that question. Put it
12:17:04 10 on the ELMO. Tell me what it is and put it on the ELMO.

12:17:16 11 MR. LOEVY: He went out in a car with Harley Evans
12:17:21 12 and he took --

12:17:22 13 THE COURT: You just got an order from a judge. The
12:17:24 14 next thing that is going to happen is that you are going to
12:17:26 15 comply with the order from the judge.

12:17:28 16 MR. LOEVY: I'm already done. He said he had to take
12:17:32 17 a break, a leak I believe is the expression he used in one of
12:17:35 18 the transcripts. Yeah, where did you go? I stepped out over
12:17:37 19 there in a field. He got back in the car.

12:17:40 20 THE COURT: I am looking for the word "hit team."
12:17:42 21 Show them to me.

12:17:42 22 MR. LOEVY: The word hit team is not this there.

12:17:45 23 THE COURT: Okay. You are missing my point. You are
12:17:47 24 not evening listen to me, for God's sake. You're not even
12:17:49 25 listening to me. You're trying to jam this language into his

12:17:51 1 ear. And I know that's part of the strategy, I get it. I
12:17:54 2 mean, that's what lawyers do. You're not going to be able to
12:17:56 3 do it with this witness. You are just not.

12:17:59 4 MR. LOEVY: I am past that because I am not going to
12:18:01 5 try.

12:18:01 6 THE COURT: No, you are not past it because that's
12:18:03 7 where this thing fell apart right now.

12:18:05 8 MR. LOEVY: Four men got in the car --

12:18:06 9 THE COURT: So you're now listening to what the judge
12:18:08 10 is telling you.

12:18:08 11 MR. LOEVY: I already am.

12:18:09 12 THE COURT: Okay. No. I mean, I just said to you if
12:18:12 13 there was some question that you could show me where, you
12:18:15 14 know, he's asked a question, who was the hit team and he names
12:18:18 15 four people, then, of course, you have a basis to ask that
12:18:20 16 question. I asked you to show it to me. You showed me
12:18:23 17 something else. I said where is the word hit team. You said
12:18:26 18 I don't have that in there, so you can't use this vague
12:18:29 19 terminology.

12:18:29 20 MR. LOEVY: That I am well past. No hit team words.

12:18:33 21 Four men got in a car to kill Fuddy. Four men got in
12:18:37 22 a car to kill him. That's always been his story.

12:18:39 23 THE COURT: I understand. Then ask him that
12:18:41 24 question.

12:18:41 25 MR. LOEVY: All right. There you go. Because I do

12:18:43 1 get --

12:18:44 2 THE COURT: It's just -- I don't understand if you're
12:18:46 3 getting the message here. This is a witness, okay, who is
12:18:50 4 poised, I'll just use this word, to screw you. He's poised to
12:18:55 5 screw you. And what you do with a witness like that, and I
12:18:59 6 know you've tried a lot of cases, maybe you have tried more
12:19:02 7 cases than I've tried as a lawyer, but you haven't tried more
12:19:04 8 cases than I've seen as a judge and I have seen every possible
12:19:08 9 mistake that can be made times about ten. What you do with a
12:19:12 10 witness who is trying to screw you is don't give him floating
12:19:15 11 softballs that he can screw you on.

12:19:17 12 MR. LOEVY: I hear you.

12:19:18 13 THE COURT: And you got to stop doing it.

12:19:19 14 MR. LOEVY: I hear you.

12:19:20 15 THE COURT: And that's all I'm going to say.

12:19:22 16 MR. LOEVY: Thank you, your Honor.

12:19:23 17 THE COURT: 1:15.

12:19:25 18 (The trial was adjourned at 12:15 p.m. until 1:15 p.m. of
12:19:30 19 this same day and date.)

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